



Project
funded by the
EUROPEAN UNION



International
Labour
Organization

POLICY RECOMMENDATIONS ON INDIVIDUAL AND COLLECTIVE LABOUR DISPUTE SETTLEMENT SYSTEMS AND FACILITIES FOR TRADE UNION OFFICIALS AND MEMBERS TO EXERCISE THEIR RIGHTS

PROJECT
"SUPPORTING THE IMPLEMENTATION
OF THE ROADMAP ON TACKLING
UNDECLARED WORK IN GREECE"¹

¹ This technical support project is funded by the Structural Reform Support Programme, and is implemented in cooperation with the European Commission's Directorate-General for Structural Reform Support (DG REFORM) under contract SRSS/S2018/082.

JULY 2020

These policy recommendations do not reflect the official opinion of the European Union, nor of the ILO supervisory bodies. They should be read in the context of the project "Supporting the implementation of the roadmap on tackling undeclared work in Greece."





Table of Acronyms

CFA	Committee on Freedom of Association
CEACR	Committee of Experts on the Application of Conventions and Recommendations
CFREU	Charter of Fundamental Rights of the European Union
ECHR	European Convention on Human Rights
ESC	European Social Charter
EU	European Union
EWC	European Works Council
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organization

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Context of the project²

1. From 2016 to 2020, the International Labour Office (hereinafter “the Office”) implemented a project in close collaboration with the Government and the social partners in Greece “Supporting the transition from informal to formal economy and addressing undeclared work in Greece”. The project, carried out in three phases, was funded by, and implemented in cooperation with, the European Commission’s Directorate-General for Structural Reform Support (DG REFORM, former SRSS). Following the national tripartite consensus reached about a national three-year roadmap, an Action plan on tackling undeclared work was prepared with the help of the project. The phase two project was then launched in 2018 to support the implementation of a number of actions described in the Action plan, while the third-phase project aimed at supporting the implementation of the Action plan until the end of the roadmap (December 2019). In 2019, the scope of the project was extended to review the framework on individual and collective dispute resolution and trade union rights and facilities for trade union representatives from a comparative European and international perspective. The present policy recommendations are provided in the context of this last phase extension.
2. This latest phase of the project has two main objectives. First, the project has provided technical support to the Ministry of Labour and Social Affairs (MoLSA) and to the Greek social partners in the areas of individual and collective dispute resolution and trade union facilities. Second, the project has also aimed at enhancing tripartite consultation and social dialogue on labour law reform processes in these areas.

Introduction

3. These policy recommendations address some areas of possible changes in the Greek labour law framework that could modernise dispute settlement systems on the one hand, and facilities for trade union officials and members in Greece on the other. They are formulated in response to specific queries and comments received from the Greek government and the social partners.

Context of
the project

²The policy recommendations were prepared by Verena Schmidt (ILO Inclusive Labour Markets, Labour Relations and Working Conditions Branch (INWORK)) and Valérie Van Goethem (ILO Labour Law and Reform Unit (LABOURLAW)), in coordination with Frédéric Lapeyre (ILO Development and Investment Unit (DEVINVEST)). The authors are grateful for the invaluable support provided by Ms. Athina Malagardi (Senior National Consultant), Ms. Vongai Masocha (LABOURLAW) and Ms Ambra Migliore (INWORK) as well as all other ILO colleagues involved from the Governance and Tripartism Department (GOVERNANCE), International Labour Standards Department (NORMES) and Conditions of Work and Equality Department (WORKQUALITY).

4. The present policy recommendations are based on international labour standards and relevant comments by the ILO supervisory bodies. They are also built on the comparative knowledge and experience developed by the Office over the years.
5. The Office recalls that these recommendations were not prepared on the basis of any draft legislative proposal submitted by the Government. In some instances, alternative options are provided. These alternative options
6. The Office invites the Government to submit any draft policy or legislative proposals sufficiently well in advance to the Office and social partners for consultation. It also recalls its availability to provide a technical review of any draft law in these areas, upon request of the Greek Government, as foreseen by Art. 10 of the ILO Constitution.
7. Greece has ratified all eight fundamental ILO Conventions,³ three out of four governance Conventions,⁴ and a total of 71 ILO Conventions, of which 51 are in force (17 Conventions have been denounced, 3 instruments were abrogated).⁵ The Office wishes to clarify that these policy recommendations aim at promoting compliance with ratified international labour standards and closer alignment with sound practices from a comparative perspective.
 - 7.1 However, these policy recommendations are provided without prejudice to any comments that may be made by the ILO bodies responsible for supervising compliance with international labour standards.

³ Greece has ratified the Forced Labour Convention, 1930 (No. 29), the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Equal Remuneration Convention, 1951 (No. 100), the Abolition of Forced Labour Convention, 1957 (No. 105), the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the Minimum Age Convention, 1973 (No. 138) – Minimum age specified: 15 years – and the Worst Forms of Child Labour Convention, 1999 (No. 182).

⁴ Greece has ratified the Labour Inspection Convention, 1947 (No. 81), the Employment Policy Convention, 1964 (No. 122), the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144). It has not ratified the Labour Inspection (Agriculture) Convention, 1969 (No. 129).

⁵ The full list of ratified conventions by Greece is available in Annex I and on the NORMLEX website / Ratifications for Greece: https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102658

8. The Office acknowledges that the current project phase was carried out during the first wave of the COVID-19 pandemic which greatly impacted the government as well as workers' and employers' organizations. Despite these difficulties the constituents were available for various consultations. The policy recommendations draw on the outcomes of the inception mission by the ILO project team⁶ that took place in Athens from 29-31 January 2020, two rounds of individual workshops with government and social partners on 10-11 June 2020 for the presentation and discussion of the two comparative studies, and on 8-9 July 2020 for the presentation and discussion of the draft policy recommendations, as well as a tripartite technical workshop on 20 July 2020 for the presentation and discussion of the revised draft policy recommendations. All workshops were carried out via videoconferences.⁷

They also build on the responses to the questionnaire that was shared with the Greek constituents in February 2020.

9. The policy recommendations were also based on the following two comparative background reports which were commissioned by the project: Firstly, the "Individual and collective labour dispute settlement systems – A comparative review" by Dr. Aristeia Koukiadaki, which included comparative analysis of Australia, Belgium, France, Spain, Sweden and the United Kingdom (see Annex IV for an executive summary of the study). And secondly, the "Facilities for trade union officials and members to exercise their rights – A comparative review" by Professor Filip Dorssemont, which included comparative analysis of Belgium, Denmark, France, Germany, Italy, Spain and Sweden (see Annex V for an executive summary of the study). Two background reports on Greece on the same topics were drafted by Professor Costas Papadimitriou (University of Athens) in February 2020 and relevant findings of those were incorporated into the international reports, including summary comparative tables on the most relevant legislation.

⁶ The ILO project team comprises: Frédéric Lapeyre, Senior Coordinator on the Informal Economy, ILO; Verena Schmidt, Labour Relations and Collective Bargaining Specialist, ILO; Valérie van Goethem, Labour Law Specialist, ILO; Athina Malagardi, Senior National Consultant;

Filip Dorssemont, Professor of Labour Law, Université Catholique de Louvain; Aristeia Koukiadaki, Senior Lecturer in Labour Law, University of Manchester; Costas Papadimitriou, Professor of Labour Law, University of Athens (until his appointment to OMED on 17.02.2020) and Ioannis Koukiadis, Professor Emeritus, Aristotle University of Thessaloniki (July 2020).

⁷ The EC-ILO project organized a tripartite technical meeting on 20 July 2020 via videoconference. During the meeting, the Ministry stated that the ILO technical assistance project on providing comparative practices in the fields of individual and collective disputes and trade union facilities will form the basis for a draft law on the above issues. The draft law is expected to be discussed at the Greek Parliament in the beginning of September 2020. The Ministry also stated that further technical assistance by the ILO would be sought on the reengineering of both SEPE and the "enlarged" OMED. The social partners called for social dialogue on the draft labour law. They also demanded various conditions for the transfer of conciliation services to OMED.

In response to the CEACR observations, the Ministry has stated the following:

- With respect to individual labour disputes, "the Ministry intends to separate the conciliation from labour disputes resolution as described in Article 23, para. 1, of Law 4144/2013, transferring all disputes to OMED (collective disputes to be settled by collective agreements and individual disputes to be settled with the consent of the parties). To this end the independence and experience of OMED in providing impartial mediation and arbitration services would be strengthened by also adding conciliation, while human resources, technical support and financing would be available. Training programmes for mediators, arbitrators and conciliators would be organized and extended also to the social partners and the Labour Inspectors, while certification procedures will be established for the new conciliators, mediators and arbitrators. Adequate transitional measures shall be taken to ensure the smooth addition of conciliation to OMED. The inspection of labour law, as the core competence of S.E.P.E., would be strengthened by improving individual disputes procedures, enhanced by the labour law background knowledge and labour market information to be made available as technical advice to employers and employees for the accurate implementation of labour law. Regular training of Labour Inspectors shall be provided."

- With respect to compulsory arbitration, the Ministry provides that "compulsory arbitration for collective disputes has been reformed by Law 4635/2019 and free collective bargaining is developing in Greece in line with international labour standards."

- With respect to the issue of trade union facilities, the Ministry provides that "Association of Persons is not a topic/thematic included in the deliverables requested in the framework of the technical assistance provided by the ILO. In any case, the Ministry always welcomes social dialogue."

Finally, the Ministry stated that "The discussion on all the above issues is expected to generate constructive social dialogue between the social partners, possibly extended to additional issues, and this would further the confidence in tripartite social dialogue on labour policies."

9.1 Finally, the policy recommendations take into account the conclusions of both the ILO 2012 Labour Inspection Needs Assessment Report (Greece), and of the 2017 ILO Assessment of the Greek Labour Administration. The policy recommendations also consider the memoranda and technical papers that were prepared by the ILO between 2015 and 2018.⁸

10. These background reports – together with the findings of the inception mission and the answers to the questionnaires that were circulated to the social partners and the government, as well as the above mentioned workshops and submissions of draft policy recommendations – provided a solid background for identifying relevant areas of concern and drafting the present policy recommendations.

11. Furthermore, while the policy recommendations are based on a comparative analysis, the Office recalls that solutions developed in one country might not be easily transposable to another. The specificities of the local regulatory environment, the national industrial relations system and the social and economic context need to be duly taken into account when reflecting about comparative perspectives.

12. Finally, the Office recalls that ILO technical assistance seeks to ensure the involvement of its primary beneficiaries – employers and workers – throughout the process of labour law reform. This reflects the centrality of the principles of social dialogue and tripartism for the ILO. It is also in keeping with the spirit of the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), ratified by Greece.

12.1 In this respect, Paragraph 5(c) of the Tripartite Consultation (Activities of the International Labour Organization) Recommendation, 1976 (No. 152) emphasises the importance of consultations in relation to “the preparation and implementation of legislative or other measures to give effect to international labour Conventions and Recommendations.” In addition, para. 6(a) of the above mentioned Recommendation refers to consultations on the preparation, implementation and evaluation of technical co-operation activities in which the International Labour Organization participates.

⁸ ILO. July 2015. Memorandum of Technical Comments to the Government of the Hellenic Republic on the Draft Law “Amending Provisions of ACT NO. 1876/1990 – restoring and recasting the framework of free collective bargaining, mediation and arbitration and other provisions”. Unpublished. Geneva; ILO. November 2015. Memorandum to the Government of the Hellenic Republic on Modernizing the Framework for Collective Bargaining. Unpublished. Geneva; ILO. July 2016. Technical Note on the Application and Extension of Collective Agreements. Unpublished. Geneva; Koukiadaki, A.; Grimshaw, D. 2016. Evaluating the effects of the structural labour market reforms on collective bargaining in Greece. INWORK Working Paper No. 85. ILO (Geneva) - this served as an input to the Experts Group established to review labour market institutions (see August 2015 ESM stability support programme for Greece); Countouris, N et al. 2016. Report on collective dismissals. ILO (Geneva). This report was co-funded by the European Union (ESF); ILO. March 2017. Technical Note on the Principle of Favourability in Labour Law and Industrial Relation Systems in Europe.

12.2 The Office therefore recalls the importance of ensuring that the development of these policy recommendations – as well as the development of any legislative initiatives in the areas under consideration – benefit from open consultations between the Government and the Greek social partners. It also recalls that open and meaningful consultation processes are needed to ensure that regulatory changes result in improving practices and systems, and in developing a labour law framework that is aligned with international labour standards and decisions of the ILO’s supervisory system and effective for the end-users.

12.3 Hence, the Office recommends that any draft legislation on the areas under consideration in the policy recommendations be shared sufficiently well in advance with relevant employers’ and workers’ organizations, as well as with the Office, in order to allow for timely consultations and tripartite social dialogue.

- 13.** The present policy recommendations are published as Volume I in a series of three reports which were developed in the framework of the EU /ILO project on “Supporting the implementation of the roadmap on tackling undeclared work in Greece”. The series of reports read as follows:
- “Policy recommendations on “Individual and Collective Labour Dispute Settlement Systems” and on “Facilities for trade union officials and members to exercise their rights” (Volume I)
 - International Comparative Report on “Individual and Collective Labour Dispute Settlement Systems” (by Dr. Aristeia Koukiadaki) (Volume II)
 - International Comparative Report on “Facilities for trade union officials and members to exercise their rights” (by Prof. Filip Dorssemont) (Volume III).

The three reports can be read individually or in a series.

- 14.** The policy recommendations were prepared by Verena Schmidt (ILO Inclusive Labour Markets, Labour Relations and Working Conditions Branch) and Valérie Van Goethem (ILO Labour Law and Reform Unit), in coordination with Frédéric Lapeyre (ILO Development and Investment Unit). The Office is thankful to Ms. Athina Malagardi, Senior National Consultant, for her crucial support and suggestions.

ILO. July 2015. Memorandum of Technical Comments to the Government of the Hellenic Republic on the Draft Law “Amending Provisions of ACT NO. 1876/1990 – restoring and recasting the framework of free collective bargaining, mediation and arbitration and other provisions”. Unpublished. Geneva; ILO. November 2015. Memorandum to the Government of the Hellenic Republic on Modernizing the Framework for Collective Bargaining. Unpublished. Geneva; ILO. July 2016. Technical Note on the Application and Extension of Collective Agreements. Unpublished. Geneva; Koukiadaki, A.; Grimshaw, D. 2016. Evaluating the effects of the structural labour market reforms on collective bargaining in Greece. INWORK Working Paper No. 85. ILO (Geneva) - this served as an input to the Experts Group established to review labour market institutions (see August 2015 ESM stability support programme for Greece); Countouris, N et al. 2016. Report on collective dismissals. ILO (Geneva). This report was co-funded by the European Union (ESF); ILO. March 2017. Technical Note on the Principle of Favourability in Labour Law and Industrial Relation Systems in Europe.



Summary of policy recommendations on individual and collective labour dispute settlement systems

Summary of policy recommendations on individual and collective labour dispute settlement systems

15. The Office recalls the general guidance provided by international labour standards for the effective functioning of national labour dispute systems, in particular the fact that the notion of 'effectiveness' of dispute resolution systems entails various parameters, such as accessibility, fairness, impartiality, informality, rapidity, affordability, consensus and expertise. It also recalls that ensuring the effectiveness of a dispute resolution system implies securing access to effective and enforceable outcomes of dispute resolution procedures, including access to effective remedy, and participation of stakeholders in the design and operation of the dispute resolution systems (see attached Note on international labour standards and dispute resolution, and the list of international labour standards ratified by Greece in Annex). In light of the above, the Office recommends that various conditions be established, or strengthened, to ensure the effectiveness of the labour dispute settlement system in Greece.
16. Specifically, with respect to conciliation services on individual labour disputes, it recommends – in line with Article 3 of ILO Convention No. 81 – not to overburden labour inspectors with additional duties, which may interfere with the effective discharge of their primary duties or prejudice in any way the authority and impartiality, which are necessary to inspectors in their relations with employers and workers. It also recalls that ILO Recommendation No. 81 provides that "the functions of labour inspectors should not include that of acting as conciliator or arbitrator in proceedings concerning labour disputes".
17. The 2017 ILO Labour Administration Needs Assessment Report also provided in this respect that:

"The labour inspection has been affected negatively by the budgetary cuts (...). For instance, labour inspectors are assigned to or choose to do conciliations between employers and workers in cases of individual labour disputes. The labour inspectors spent up to half of their time on conciliation of individual labour disputes (...). These functions take away too much valuable time from the labour inspectors to fulfil their core role (law enforcement), related to protecting workers from work hazards and to promote and enforce that workers are paid and treated according to the current labour laws".
18. Thus, labour inspectors should prioritize the performance of inspections and levying of fines when the labour law is not fulfilled (law enforcement) rather than spending their time on solving individual labour disputes, unless there are specific circumstances that justify this, or this explicitly forms part of the overall labour inspection strategy (for example, by providing counselling to small or poor employers instead of imposing sanctions). The MoLSA informs that due to the economic crisis and the slow judicial procedures in the civil courts, it is a political choice to use SEPE to help solving labour disputes, particularly those that involve small and very small enterprises (...).
19. Specific functional arrangements should be made to coordinate labour inspection activities with other government services engaged in similar tasks (mainly with MoLSA services), such as Social Security (EYPEA), the Independent Authority for Public Revenues, OMED and the judiciary. In this regard, a coordination body could be considered to diffuse best practices, create joint criteria and disseminate experience.

- In the Greek context, not overburdening labour inspectors with additional duties on top of their primary ones might be achieved in practice through various scenarios, as detailed below. It might imply, for instance, establishing a separate unit within the labour administration for the examination of grievances by dispute resolution officers. It might also imply assigning individual labour dispute conciliation services to a list of conciliators appointed by bipartite boards. Alternatively, it might imply transferring conciliation functions currently allocated to SEPE to a central body, such as OMED. Given that the Greek law distinguishes between two types of individual disputes conciliation processes under Article 23 of Law 4144/2013, consideration could also be given to transferring only one of these two types of conciliation processes to OMED.⁹
- In all case scenarios – whether individual labour dispute conciliation services remain with the labour administration, or they are transferred, in full or in part¹⁰, to OMED – various parameters would need to be secured for the system to function effectively. In any event, the differentiation between the processes for individual and collective labour disputes, as provided for in the current legislation regarding the role of SEPE, could be maintained.
- However, in the event that only one of the two individual dispute types, identified under Article 23 of Law 4144/2013 (i.e. either disputes with a collective interest, or ‘purely’ individual disputes) would be transferred to OMED, the Office recommends clarifying the definition of the two types of individual disputes under Article 23 of Law 4144/2013, in order to limit misunderstandings in these areas.¹¹ It also recommends clarifying which authority has the power to decide, in practice, whether the dispute under consideration belongs to the first or the second type – in order to establish whether the dispute under consideration should be processed by OMED.
- Moreover, in all case scenarios, the areas of synergies, cooperation and coordination between OMED and SEPE should be identified. Such areas might include, in particular, training strategies, as detailed below.
- Furthermore, in all case scenarios, the Office recalls the importance of ensuring the respect and the implementation of the principles of transparency, independence, speed, accessibility and quality of services to ensure the effectiveness of labour dispute resolution system.
- Finally, in all case scenarios, the Office recommends taking appropriate measures to ensure that conciliation services over individual disputes will remain available and effective during any **transitional period** that might be required in the context of reorganising the labour dispute system. Depending on the option chosen, the transitional period might be relatively long. The Office recommends ensuring that the reorganization of the system, whatever form it might take, will not impact negatively access to effective conciliation services for workers and employers across the country.

⁹ The Office understands that Article 23 of Law 4144/2013 distinguishes two types of conciliation processes. The first one refers to individual disputes that entail a collective interest. The issues at stake could be for instance, the non-granting by the employer of a prescribed allowance, the non-observance of health and safety conditions, the illegal employment of overtime workers, the non-observance of the employer's obligation to provide trade union facilities, etc. In this case, because of the collective interest at stake, the request for conciliation can be made by the employer of the trade union organization. The second type of conciliation process over individual disputes refers to alleged misapplication of labour laws and regulations. It is a legal dispute stricto sensu between one or more employees individually and an employer, arising from their labour relations. This second type of conciliation comes close to a “pre-trial settlement”, and may contribute to preventing the parties from going to court. According to the background report prepared by Prof. Papadimitriou (p. 31), annually there are around 120 disputes of the 1st type (on the basis of data from 2016 and 2017).

¹⁰ On the basis of the distinction established under Article 23 of Law 4144/2013.

¹¹ This would also include clarification in respect of the conciliation procedure established under Article 13 of Law 1876/1990.

20. Should the individual labour dispute conciliation services remain within the remit of the labour administration, the Office recommends in particular:

- Undertaking an **objective and independent evaluation of the conciliation functions and services currently provided by SEPE**, in order to better assess the strengths and weaknesses of the current system, before making any decision on its reorganization

As emphasised by the Committee of Experts on the Application of Conventions and Recommendations (CEACR), in view of the potentially large proportion of work dedicated by labour inspectors to conciliation functions, **ensuring the separation of conciliation from inspection functions**.¹²

21. Such separation would also better reflect the fundamental differences in the culture and approaches of the two functions: on the one hand, conciliation aims at the amicable settlement of the conflict and the reconciliation of the points of view; on the other hand, inspection is intrinsically linked with the notions of enforcement and sanctions.

22. Should dispute resolution operate alongside inspection, in the event of disputes incurring administrative/criminal sanctions imposed by the Labour Inspectorate, it should also be considered to introduce a requirement for cross-referral of disputes to labour inspectors so as to ensure effective enforcement.

- As pointed out by the CEACR, on the basis of the ILO 2012 Labour Inspection Needs Assessment Report (Greece), **establish a separate unit** for the examination of grievances by dispute resolution officers, in view of the fact that there is already a select group of officials specializing in labour disputes at the Ministry of Labour.¹³

- As provided by the ILO 2012 Labour Inspection Needs Assessment Report, develop an **Action plan for SEPE** that establishes prioritized objectives, a timeline and roles and responsibilities for strengthening the overall functioning and effectiveness of the labour inspection system in Greece. As emphasised in the Needs Assessment Report, such an action plan could also serve as the basis for mobilizing resources and technical assistance (particularly from the ILO) towards achieving the plan's objectives

- Also, as emphasised by the ILO 2012 Labour Inspection Needs Assessment Report, undertake, once the economic situation improves, **a review of the human and material resources available** to the labour inspectorate to make sure that it is adequately staffed and resourced to effectively carry out its mandate

- In line with the above, invite SEPE to introduce a **clear plan for the reorganization of its structure and functioning with a view to ensuring the separation of the functions of conciliation from those of inspection** and provide effective inspection and resolution services. This plan would address in particular the financial, technical and human resources needed to implement the reorganization. Such plan would be adopted following consultations with the social partners

- Finally, in line with good practice from other dispute resolution systems,¹⁴ and depending on the option chosen, **clear guidance should be provided in terms of the procedure and the scope for cross-referral of claims, if relevant**.

¹² Direct Request (CEACR) - adopted 2015, published 105th ILC session (2016) -- Labour Inspection Convention, 1947 (No. 81) – Greece (Ratification: 1955). Available at: https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COM-MENT_ID:3255324

¹³ Ibid.

¹⁴ Koukiadaki, A. Individual and collective labour dispute settlement system – A comparative review, Section 4.2.

23. The Office recalls that the option of establishing a separate unit within SEPE for conciliation matters was also foreseen in the 2018 Assessment report on necessary amendments to the legal framework regarding inspections in agriculture and recommendations for reforms in line with ILO Convention No.129¹⁵ (hereafter: "2018 Assessment report"), which provided in this respect that: "There can be no doubt that the SEPE should use this opportunity (tackling the coverage of the agriculture sector) to design a strategy for combining efforts and curbing non-traditional tasks. Moreover, these tasks could be progressively deviated to other bodies (for instance, functions of general information to the public could be undertaken by general information offices within the Ministry or by the Decentralised Administrations at territorial level) and the conciliation applications by workers should be handled by inspectors in the course of field inspection or be left to specific mediators (picked up from national or local lists), in particular those referred to class action disputes"¹⁶
24. Furthermore, the 2018 Assessment report pointed out that "Conciliation procedures may well be part of the Ministry strategic goals, however labour inspection should be partially discharged of these tasks, in particular those related to mediation procedures in respect of individual applications. SEPE should take the necessary measures to down-size non-traditional inspection tasks (conciliation, supervision of internal regulations of companies) with a view to providing broad and better coverage to all sectors subject to inspection, including the agriculture sector. As regards to the conciliation procedures, legislative steps could be taken with a view to assigning such conciliation tasks to other officials, or to lists of conciliators appointed by bipartite boards. The labour inspectors could still deal with a great part of these mediation functions (in particular individual ones) in the course of their inspections".¹⁷
- Ensure **effective, up-to-date and continuous training on conciliation techniques labour laws and regulations and specific issues** (e.g. dispute resolution in SMEs and reaching out to workers in vulnerable situations) for the relevant officers, in order to enable them to address the greater complexity and diversity of individual disputes; and to limit heterogeneity in the handling of labour disputes throughout the country. This might include taking specific measures such as for instance:

¹⁵Convention No. 129 has not been ratified by Greece.

¹⁶Page 29

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25. Develop a regular (e.g. two-year) training plan based on institutional needs, which would include training in up-to-date conciliation techniques; revised labour laws and regulations and harmonizing criteria for their coherent implementation; strategic planning and management; policy design; the functioning of the labour administration, etc.
26. Such training plan would be available to all staff, located both in headquarters and elsewhere in the country. It would use different training techniques, including for instance face-to-face training, on-the-job-training, e-learning, etc.
27. Such training plan could also include participation in relevant trainings organized by the ILO International Training Centre.
28. It could also be considered to examine whether OMED, under certain conditions, could play a role in providing training to officers in charge of conciliation.
- As to the issue of the **advisory function of labour inspectors**, it could be considered to separate within SEPE the function of advice and information from the conciliation and inspection functions.
29. The Office recalls the recommendation of the 2018 Assessment report that "the functions that inspectors carry out in relation to advice and/or information to citizens, especially workers, could be progressively migrated to specific labour information offices (e.g. decentralized Administrative Offices), to internet help desk services such as IRIS131 or redirected to Trade Unions offices."
30. It could also be considered to examine whether the model of the Citizen Service Centres (KEP) could be of any support in the establishment of the advisory/information service of SEPE.
31. Such service could also include, the provision of **targeted guidance and training to employers** and employees by dispute resolution agencies, which could contribute significantly to dispute prevention. The cases of Australia and the UK are instructive in this respect. In Australia, this involves the development by the Fair Work Ombudsman (the equivalent of SEPE) of an Online Learning Centre, offering facilities such as programmes to assist employees and employers in holding difficult conversations with each other. In the UK, ACAS delivers a number of advisory projects with individual companies on subjects such as managing change.¹⁸
- As to the issue of the **distinction between different types of disputes within the national legal system and the interplay between conciliation and enforcement**, the Office recalls that it is a matter to be decided at the national level. The Office understands that in the case of Greece, the type of intervention (i.e. conciliation or inspection) by SEPE is dependent on the nature of the complaint and the will of the complainant.

¹⁸Koukiadaki, "Individual and collective labour dispute settlement system"

¹⁹Ebisui, M., Cooney, S., Fenwick, C., Resolving individual labour disputes: A comparative overview, ILO 2016. Available at: https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_488469.pdf

32. The Office recalls in this respect that in some countries, monetary and administrative complaints are distinguished from other types of complaints: in the case of former, mediation/conciliation are not formally offered.¹⁹ In other systems (e.g. the UK), there are parallel systems of enforcement and dispute resolution, involving early conciliation.²⁰ Where enforcement and dispute resolution through conciliation/mediation is provided by a single agency (e.g. Australia, Spain), settlement options are built into the procedures of the labour inspectorates, as a major step before enforcement. The investigation process of the Fair Work Ombudsman (FWO) in Australia, for instance, includes three steps: (a) assessment of the complaint; (b) dispute resolution by FWO mediators, primarily through telephone services; and (c) consideration of enforcement options by fair work inspectors.
- Finally, it could also be considered to **introduce a Code of ethics** (drawing on relevant ILO Conventions, the provisions of the Labour Code and related legislation in Greece) that would set out the duties and rights of labour inspectors.
33. **Should the conciliation services for individual labour disputes be transferred in full or in part to OMED**²¹, the Office recommends ensuring that this decision be based on the results of an external assessment (audit) of the performance, functioning, capacities and resources of OMED to absorb additional functions. As detailed below, such assessment would need to address specifically the conditions to be established, or strengthened, to allow OMED to provide conciliation services on individual labour disputes, in addition to its current competences. Furthermore, the following specific parameters for the effectiveness of the system, would have to be taken into account:
- Independence and impartiality. The Office understands that OMED was established as an independent private entity. Should conciliation services on individual labour disputes be transferred within its competences, the Office recommends guaranteeing the independence and impartiality of OMED.
34. This might include taking specific measures, such as **evaluating whether the existing rules are fit for purpose** or need to be adjusted to take into account the new duties of OMED (e.g. revision of the Rules of procedures of OMED, revision of its Code of conduct, etc.).
35. Further, independence could be promoted, for instance, through the **introduction of a requirement in legislation** that the services provided by OMED shall not be subject to directions of any kind from any Minister as to the manner in which it is to exercise its functions under any enactment.²²

²⁰ For instance, in the context of the National Minimum Wage Regulations in the UK, if the Her Majesty's Revenue and Customs (HMRC), which is responsible for enforcement, find that the employer has not paid the correct wage rates, they will send them a notice for the arrears plus a fine for not paying the minimum wage. HMRC can take them to court on behalf of the worker if the employer still refuses to pay. Workers can also go directly to the employment tribunal themselves (in this case, the ACAS early conciliation scheme applies).

²¹ This concerns primarily the case of individual labour disputes with a collective interest (see discussion above in footnote 3).

²² For similar examples, see, among others, the FWC's Member Code of Conduct in Australia that provides that "the President is not subject to direction by or on behalf of the Commonwealth" (<https://www.fwc.gov.au/documents/documents/resources/membercodeconduct.pdf>)

36. Moreover, adding conciliation services on individual labour disputes to the competences of OMED will undoubtedly call for an **increase in the budget of the institution**. The Office understands that OMED's budget is provided through contributions by employers' and workers' organizations. The Office recommends consulting with the social partners to determine how the budget of OMED would be increased should OMED be tasked with additional duties. Ensuring OMED's independence and impartiality should remain a key parameter in this discussion.
- *Geographical accessibility.* The Office understands that, contrary to SEPE that has the capacity to deploy labour inspection services across the country, including the various islands, OMED is a centralized organization with limited geographical representation (offices are in Athens and Thessaloniki only). Should conciliation services be transferred to OMED, the Office recommends ensuring that the limited geographical representation of OMED will not, in practice, prevent access to dispute resolution services for individual labour disputes arising in all parts of the national territory, including remote regions and islands.
37. This might involve taking specific measures, for instance confidential advice and information on employment rights, rules and dispute resolution options over the telephone (such as those established by ACAS in the UK) – while ensuring that face-to-face services will always remain available – and cross-referral of claims with the labour inspectorate (e.g. in the case of Australia).
- *Effective access without discrimination.* Should conciliation services on individual labour disputes be provided by OMED, the Office recommends ensuring effective access to such conciliation services for all workers, without discrimination, irrespective of race, colour, sex, religion, political opinion, national extraction or social origin, or any other personal characteristics, and irrespective of contractual status – including for workers in unclear or disguised employment relationships. This recommendation is consistent with the overall objective of the present project on tackling undeclared work. It is also particularly important in light of the prevalence of migrant workers in certain sectors, who may not speak Greek.
38. This might include taking specific measures, such as targeted campaigns and advice concerning certain categories of workers in vulnerable situations and/or sectors, workplaces, or geographical areas where violations of labour protection legislation are prevalent, or where workers are often unaware of applicable protective laws and standards. It might also include dissemination of information about bipartite mechanisms for dispute prevention and resolution available at the enterprise level.
39. Cooperation with trade unions, employers' organizations and other organizations would be recommended, including, for instance, migrant resource networks, to raise awareness of labour rights and provide training about, among others, false self-employment (as in the case of Australia).
- *Affordability.* The Office understands that the current conciliation services delivered by SEPE are provided free of charge and that lower income workers can appeal at no cost. Should conciliation services on individual labour disputes be provided by OMED, the Office recommends ensuring that these services be similarly provided free of charge (as is the case in many other national legal systems).



40. This might also involve taking specific measures, such as providing detailed information about the process and the labour standards involved in the dispute before the beginning of the process and acceptance by the parties. These may be incorporated, for instance, in a handbook outlining the dispute resolution process.
41. It may also include considering dispute prevention mechanisms involving representative bodies, with the view to reducing the risk of escalation of the dispute. These may be, for instance, introducing in the national legislation a 'right to notify' for both employees' representatives and health and safety committee representatives in the event of violation of the rights of individuals; serious and imminent danger; and serious risk to public health and the environment (e.g. as in France).²³
- *Simplicity of the procedure.* The Office understands that the current conciliation services before SEPE are perceived as clear, uncomplicated and informal. Should conciliation services on individual labour disputes be provided by OMED, the Office recommends ensuring that these services be provided in a similarly clear, simple and uncomplicated manner. As mentioned above, consideration might be given to developing a handbook outlining the process for dispute resolution.
 - *Timely and efficient processing.* The Office understands that the current conciliation services delivered by SEPE are characterized by speed (usually not more than 20 days (indicative duration).²⁴ Should conciliation services on individual labour disputes be provided by OMED, the Office recommends ensuring that they should be similarly uncomplicated, user-friendly and as rapid as possible in order to ensure that individual labour disputes are quickly resolved.
42. The importance of the speed of the conciliation procedure is a principle that should apply irrespective of the size of the company. However, it is particularly relevant in small and medium-sized enterprises (SMEs). Hence, consideration might be given to adopting specific measures to facilitate prompt access to effective conciliation services for workers and employers in SMEs.

²³ For a detailed analysis of the French system, see: Ebisui, M., Cooney, S., Fenwick, C., *Resolving individual labour disputes: A comparative overview*, ILO 2016. Available at: https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_488469.pdf

²⁴ See national background report by Prof. K. Papadimitriou (Feb. 2020) (unpublished)

- 43.** This might include taking specific measures, such as offering specialised telephone inquire services for all firms, while allocating a specific line dedicated to disputes in SMEs. It may also include offering dispute prevention services (e.g. educational campaigns), specifically tailored to the needs of employers and workers in SMEs, given the prevalence of companies with up to 49 employees (e.g. as in the case of Australia).
- *Effective training and qualification.* The Office understands that OMED has already a certain number of trained and experienced mediators for collective labour disputes. Should conciliation services on individual labour disputes be provided by OMED, the Office recommends ensuring effective, up-to-date and continuous training on conciliation techniques to address the greater complexity and diversity of individual disputes.
- 44.** This might include taking specific measures, such as introducing/amending existing codes of ethics for mediators and conducting regular evaluations of the performance of the service (as in the UK, for example).
- 45.** It might also involve taking specific measures such as for instance:
- Developing a regular (e.g. two-year) training plan based on institutional needs, which would include training in up-to-date conciliation techniques; revised labour laws and regulations and harmonizing criteria for their coherent implementation; strategic planning and management training; policy design; the functioning of the labour administration, etc.
- 46.** Such training plan would be available to all staff, located both in headquarters and elsewhere in the country. It would use different training techniques, including for instance face-to-face training, on-the-job-training, e-learning, etc.
- 47.** Such training plan could also include strengthening coordination with the ILO International Training Centre in order to exchange mediation and conciliation training strategies with other countries.

- 48.** More generally, the Office recommends:
- Ensuring that the decision to be taken regarding the allocation of conciliation services for individual labour disputes – to either SEPE or OMED – be based on the outcome of sound and meaningful social dialogue between the Government and the Greek social partners. This dialogue is initiated by the present project and should be pursued regularly on the long term, beyond the project, to assess the effectiveness of the system.
 - Recognizing the role played by the social partners, not only in the establishment but also in the operation of the dispute prevention and resolution system. Mechanisms considered here could include, for instance, the creation of tripartite administrative committees, as in the case of the Local Administrative Committees of the Social Insurance Institute (IKA).
 - Ensuring that this decision be based on the results of an external assessment (audit) of the performance, functioning, capacities and resources of OMED that would address specifically the conditions to be established, or strengthened, to allow OMED to provide conciliation services on individual labour disputes, in addition to its current competences. Such conditions would need to guarantee a number of key parameters, including geographical coverage, non-discrimination and accessibility, affordability, rapidity and efficiency and continuous training. Such assessment of OMED would facilitate the evaluation of the risks and opportunities of reallocating conciliations services over individual disputes within the Greek dispute resolution system. The assessment of OMED would supplement the above-mentioned recommended evaluation of the conciliation services currently provided by SEPE.
 - Taking into account the interplay of the individual labour dispute resolution mechanisms with social dialogue, judicial and human rights/equality institutions, as well as with other possible tripartite bodies, and examining best ways to strengthen coordination and synergies.²⁵ The Office understands that only a minority of individual cases currently brought to conciliation relate to discrimination or privacy protection issues, and that coordination with specialized institutions in these areas would, therefore, be relatively easy without severely impacting the rapidity of the procedure.

²⁵ In respect of the relationship between social dialogue and judicial mechanisms, joint procedures for the resolution of individual labour disputes (except for unfair dismissals) have been established, for instance, in Spain through collective agreements. Some joint mechanisms are integrated into the public administration of the autonomous communities or the labour relations councils, while others function as a substitute for administrative conciliation. These have the potential to improve both the system's efficiency and access to its services, given the limited efficacy of administrative conciliation and the delays associated with action through the courts.

In respect of the interplay of dispute resolution mechanisms with human rights bodies, the operation of the latter can expand the options available for dispute resolution and enhance users' choices and access, provided that users are well informed about the benefits of each option and that there is clarity in terms of the remit of such mechanisms vis-à-vis other labour dispute resolution mechanisms. In this respect, reconsidering the remit of the human rights bodies can also contribute to the effective functioning of dispute resolution systems. For instance, the Equality and Human Rights Commission in the UK supports strategic litigation, advising on and funding cases which are not fundable under public legal aid schemes, such as employment tribunal claims, and intervening in judicial review applications concerning labour legislation. In Belgium, the National Human Rights Institution is responsible, among others, for monitoring respect of the freedom of association or the freedom of expression (see Koukiadaki, "Individual and collective labour dispute settlement system").

- Regardless of whether conciliation and information services remain with SEPE or are transferred to OMED (in full or in part):²⁶

Ensuring an objective and regular evaluation of the performance of the labour dispute system by an independent authority, in consultation with the social partners, will be instrumental to identifying and addressing potential dysfunctions, inefficiencies or conflicts of interests; and

Ensuring the continuous, relevant and up-to-date training of the officers in charge of conciliation – whether in SEPE or in OMED – will also be key to the effectiveness of the system.

- It should also be considered to examine, in consultation with the social partners, whether the existing experience of mediation in civil matters could be of any support or inspiration in the discussion about the reorganization of the labour dispute conciliation system. In particular, the training standards and processes of mediators in civil matters may serve as inspirational model for the training of conciliators in individual labour disputes (i.e. training over a long period of time, by selected and specialized trainers, organization of exams to assess successful candidates, etc.).

The Office recommends that any draft legislation in the areas under consideration

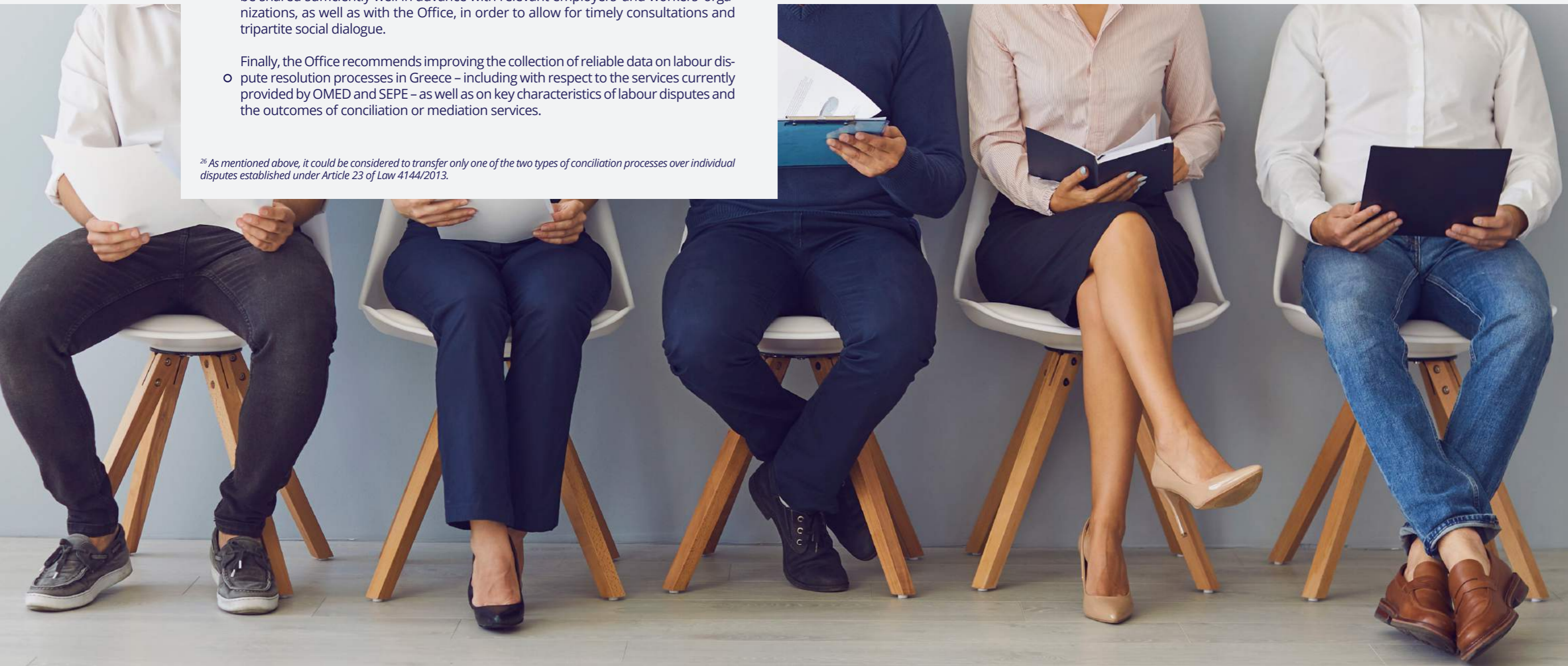
- be shared sufficiently well in advance with relevant employers' and workers' organizations, as well as with the Office, in order to allow for timely consultations and tripartite social dialogue.

Finally, the Office recommends improving the collection of reliable data on labour dispute resolution processes in Greece – including with respect to the services currently provided by OMED and SEPE – as well as on key characteristics of labour disputes and the outcomes of conciliation or mediation services.

²⁶ As mentioned above, it could be considered to transfer only one of the two types of conciliation processes over individual disputes established under Article 23 of Law 4144/2013.

49. The Office is available to provide further technical advice on any reforms concerning the organization or strengthening of conciliation services for individual labour disputes in Greece, be they allocated to SEPE or OMED, in particular:

- provide the technical assistance listed in the ILO 2012 Labour Inspection Needs Assessment Report
- provide technical assistance in designing a performance evaluation of OMED, drawing on comparative practice and
- in collaboration with the ILO International Training Centre, provide best practices of mediation and conciliation training strategies from other countries including methodologies for assessing training needs.



Compulsory arbitration of collective labour disputes

Compulsory arbitration of collective labour disputes

50. Another major issue of discussion concerning the Greek system of individual and collective labour dispute resolution is that of compulsory arbitration in collective labour disputes. This issue was heavily addressed in recent years by the ILO supervisory bodies. The Office recalls in particular the conclusions of the ILO Committee on the Application of Standards (CAS) at the 107th International Labour Conference (June 2018) and the 2019 Observation of the CEACR concerning the application of Convention No. 98 (see Annex II), as well as the conclusions of the ILO Committee on Freedom of Association in Cases Nos. 2261/2003 and 2820/2010.²⁷
- In its follow-up to the conclusions of the CAS, the CEACR in its 2019 Observation on the application of Convention No. 98 trusted that *“the Government will continue to engage with the social partners, both during its review of the law and within the context of the constitutional reform, to bring this mechanism into full compliance with the obligation to promote free and voluntary collective bargaining by eliminating, except in the cases described above, the possibility of a single party to have recourse to compulsory arbitration if the other party rejects the mediation proposal. It requests the Government to provide detailed information in this regard.”*²⁸
 - The issue of compulsory arbitration has also been the subject of successive legal reforms at the national level, in particular following decisions by supreme judicial and administrative authorities. The last major reform of the system of compulsory arbitration was introduced by Law No. 4635/2019 in 2019.
 - The Office also recalls in this respect the Recommendation No. 10 of the Experts Group established to review labour market institutions (2016) to which the ILO contributed, according to which *“(…) The system of arbitration was renewed recently and should be evaluated by the end of 2018 to assess its role in collective bargaining.”*²⁹
51. Against the background of these successive legal changes at the national level, and in light of previous ILO recommendations, the Office recommends that the Government should engage with the social partners with a view to undertaking a tripartite assessment of the redesigned regulatory framework for the settlement of collective labour disputes, in particular concerning the regulation of compulsory arbitration. The Office remains available to provide further technical assistance in this area if the Government and the social partners so decide.

²⁷ See also the 2014 ILO Study ‘Productive Jobs for Greece’, available at: https://www.ilo.org/wcmsp5/groups/public/---dgreports/-dcomm/---publ/documents/publication/wcms_319755.pdf

²⁸ Observation (CEACR) - adopted 2018, published 108th ILC session (2019 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98) - Greece (Ratification: 1962)

See: www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3962772

²⁹ Recommendations of the Expert Group for the Review of Greek Labour Market Institutions, September 2016.

See: <http://www.ieri.es/wp-content/uploads/2016/10/Final-Report-Greece-September-2016.pdf>

Summary of policy recommendations on facilities for workers’ representatives and trade union members to exercise their rights

Recommendation 1

Protection against anti-union discrimination

- No person should be prejudiced in employment by reason of involvement in trade union activities. Cases of anti-union discrimination should be dealt with promptly and effectively by the competent institutions.
- The Government is responsible for preventing all acts of anti-union discrimination, and it must ensure that complaints of anti-union discrimination are examined in the framework of national procedures which should be prompt, impartial and considered as such by the parties concerned.³⁰
- The Office understands that in Greek law (under art. 14 of Law 1264/1982) the reversal of burden of proof may cover trade union representatives at enterprise level, but this is dependent on the size of the undertaking. The Office recommends dialogue with the social partners as to how union representatives at enterprise level, who are currently not covered under the law, can be better protected against acts of anti-union discrimination.
- The guidance of Recommendation No. 143 that *“provision for laying upon the employer, in the case of any alleged discriminatory dismissal or unfavourable change in the conditions of employment of a workers’ representative, the burden of proving that such action was justified;”* implies that consideration could be given to extending the reversal of burden of proof in the context of anti-union discrimination (so as to protect all stages of the employment relationship including recruitment and non-renewal) and introducing summary proceedings.

Recommendation 2

Access to workplaces

- The Office recommends considering to grant access to all workplaces in the undertaking to all workers’ representatives, including workers’ representatives who are not employed in the undertaking, where such access is necessary to enable them to carry out their representation functions and/or to allow trade unions to make workers aware of the potential advantages of unionization with due respect for the rights of property and management.³¹ This right should be exercised in such a way as not disrupt the efficient operation of the undertaking concerned.
- If necessary, workers organizations and employers could reach agreements so that access to workplaces, during and outside working hours, can be granted to workers’ organizations without impairing the functioning of the establishment or service.³²

³⁰ COMPILATION (ILO), 2018, para. 1138.

³¹ COMPILATION (ILO), 2018, para. 1590.

³² COMPILATION (ILO), 2018, para. 1599.

Recommendation 3

Leave of absence - cost

• The Greek system facilitates the election of trade union representatives from the level of the firm or undertaking to national, sectoral or peak council office. Under certain circumstances, the elected union representative is entitled to take paid leave from the employer to perform union duties. However, there is no relation between the extent of the leave taken and the size of the firm or undertaking where the elected representative is employed. Hence, the election of such a worker as workers' representative is a "risk" which will be borne by the employer at the enterprise level, despite the fact that the workers' representative might be involved in activities at a level other than the enterprise level (e.g. sectoral, national or European). The Office understands that the employer currently has no means to mitigate the consequence of this situation.

• The Office recommends that the Government should engage in dialogue with social partners to find a solution to mitigate the risks.

Recommendation 4

Association of persons

• In line with guidance provided by C135 and C154, where there exist in the same undertaking both trade union representatives and elected representatives, appropriate measures should be taken, wherever necessary, to ensure that the existence of such elected representatives is not used to undermine the position of the trade unions concerned, especially as far as the process of collective bargaining is concerned.

• The Office encourages the Government to make collective agreements (including those signed by associations of persons) publicly accessible to enable an assessment of the extent to which the firm level agreements signed with associations of persons continue to be less favourable than the provisions at higher level since the revision of the law in 2018 and 2019, respectively.





Policy recommendations on individual and collective labour dispute settlement systems (Full version)

Introduction

- Introduction 52.** The individual and collective labour dispute resolution system of Greece has played a decisive role in the development of industrial relations at the national level. However, in recent years, various changes have been introduced into the regulation of industrial relations, including in the area of labour dispute resolution.
- 52.1** Some of these legal changes were introduced following comments made by ILO supervisory bodies, in particular by the ILO Committee on the Application of Standards at the 107th International Labour Conference (June 2018) and by the Committee of Experts on the Application of Conventions and Recommendations (CEACR) with respect to the application of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).³³ Comments in these areas were also made by the ILO Committee on Freedom of Association (332nd Report – Cases Nos. 2261/2003 and 2820/2010)³⁴ concerning the promotion of collective bargaining and the issue of compulsory arbitration.
- 53.2** Other comments by the ILO supervisory bodies pertaining to the Greek system of labour dispute resolution relate to the conciliation functions entrusted to labour inspectors, under the Labour Inspection Convention, 1947 (No. 81).³⁵
- 54.3** The Office understands that further legal changes are planned in the area of individual and collective labour dispute resolution.
- 55.** The Office recalls that there is no single international labour standard addressing directly and comprehensively the issue of labour dispute resolution. Four ILO Recommendations are dedicated to aspects of the topic.³⁶ Provisions in many instruments in the wider body of international labour standards also contain guidance on how to establish and maintain an effective labour dispute prevention and resolution system. Similarly, international labour standards do not establish strict definitions of the notions of individual or collective labour disputes, nor systematically categorize the specific mechanisms for their respective resolution. However, certain instruments and provisions are more applicable to individual disputes in comparison to collective disputes, and vice versa (see attached note on international labour standards and dispute resolution).

³⁶ In particular: the Voluntary Conciliation and Arbitration Recommendation, 1951 (No. 92); the Co-operation at the Level of the Undertaking Recommendation, 1952 (No. 94); the Communications within the Undertaking Recommendation, 1967 (No. 129); and the Examination of Grievances Recommendation, 1967 (No. 130).

³³ Observation (CEACR) - adopted 2018, published 108th ILC session (2019) – Right to Organise and Collective Bargaining Convention, 1949 (No. 98) - Greece (Ratification: 1962). See: https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3962772

³⁴ CFA, Case No. 2261/2003: https://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:2907784

³⁵ Direct Request (CEACR) - adopted 2015, published 105th ILC session (2016) – Labour Inspection Convention, 1947 (No. 81) - Greece (Ratification: 1955). See: https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3255324

- 55.1** For example, the Examination of Grievances Recommendation, 1967 (No. 130) applies to the situation where “any worker who, acting individually or jointly with other workers, considers that he has grounds for a grievance” (para. 2). According to para. 3: “the grounds for a grievance may be any measure or situation which concerns the relations between employer and worker.” However, the Recommendation does not apply to “collective claims aimed at the modification of terms and conditions of employment” (para. 4(1)).
- 55.2** The distinction drawn in this Recommendation reflects the practice of ILO member States. In some national legal frameworks, individual disputes are those that arise from the interpretation, application or violation of labour rights. These rights may be established by any of a number of different legal instruments that determine terms and conditions of work. These could include laws, collective agreements, contracts of employment, arbitrated awards, etc.^{37/38} The wording above also encompasses disputes relating to existing rights that are not subject to collective bargaining³⁹, but brought forward, for instance, by workers’ organizations in a collective capacity. In other systems, the nature of the dispute, i.e. individual or collective, is not defined as such on the basis of the nature of the interests at stake but is rather based on how the parties involved choose to deal with it.⁴⁰
- 55.3** In this regard, Recommendation No. 130 provides the following:
- “The determination of the distinction between cases in which a complaint submitted by one or more workers is a grievance to be examined under the procedures provided for in this Recommendation and cases in which a complaint is a general claim to be dealt with by means of collective bargaining or under some other procedure for settlement of disputes is a matter for national law or practice.” (emphasis added).*
- 55.4** On this basis, for the purpose of the project, the definitions of the notions of individual and collective labour disputes to be taken into consideration when addressing the present policy recommendations are those established under the Greek labour law.
- 55.5** With respect to the general guidance provided by international labour standards for the effective functioning of national labour dispute systems, the Office recalls that the notion of ‘effectiveness’ of dispute resolution systems entails various parameters, such as: accessibility; fairness; impartiality; informality; rapidity; affordability; consensus; and expertise. Ensuring the effectiveness of the dispute resolution system also implies ensuring access to effective and enforceable outcomes of dispute resolution procedures, including access to effective remedy, and participation of stakeholders in the design and operation of the dispute resolution systems (see attached note on international labour standards and dispute resolution).

³⁷ For example, in Germany individual disputes are understood to relate to rights resulting from the employment contract itself, and from the regulatory framework that governs the employment relationship. This means that an individual worker may submit a claim in relation to rights established by collective agreements and all other workplace agreements such as those agreed by Works Councils, as much as those established by legislation.

³⁸ See ILO, 2016, “Resolving Individual Labour Dispute: a Comparative Overview”, for comprehensive analysis on the different approaches adopted in 9 countries, including France, Germany, Spain, Sweden and United Kingdom. Available at: https://www.ilo.org/global/publications/books/WCMS_488469/lang-en/index.htm

³⁹ Article 2 of the Collective Bargaining Convention, 1981 (No. 154) provides that “for the purpose of this Convention the term collective bargaining “extends to all negotiations which take place between an employer, a group of employers or one or more employers’ organisations, on the one hand, and one or more workers’ organisations, on the other, for: (a) determining working conditions and terms of employment; and/or (b) regulating relations between employers and workers; and/or (c) regulating relations between employers or their organisations and a workers’ organisation or workers’ organisations.”

⁴⁰ Koukiadaki, “Individual and collective labour dispute settlement system”, Section 5.

55.6 From a comparative perspective, this notion of effectiveness can also be examined across the three-dimensional analytical framework of “efficiency, equity and voice”, as described in the comparative background report.⁴¹

56. The system of individual and collective labour dispute resolution is the subject of intense debate in Greece. The present policy recommendations aim at addressing some of the issues of most concern.

Conciliation functions entrusted to labour inspectors

Conciliation functions entrusted to labour inspectors

57. One of the main issues under discussion relates to the opportunities and challenges of transferring the conciliation services for individual labour disputes, currently provided by SEPE, to a central and independent dispute resolution body i.e. the Mediation and Arbitration Organization (OMED). Issues under consideration include the principle of access to justice, the notion of effectiveness of the dispute resolution system (including the issues of independence and impartiality, geographical accessibility, effective access without discrimination, affordability, timely and efficient processing and effective training and qualification); the requirement for voice (i.e. participation of stakeholders in the design and operation of the systems), as well as the need for sound resource management of public administrations.

58. The Office recalls that under Article 3 (1) of ILO Convention No. 81, “the functions of the system of labour inspection shall be: (a) to secure the enforcement of the legal provisions relating to conditions of work and the protection of workers (...); (b) to supply technical information and advice to employers and workers concerning the most effective means of complying with the legal provisions; (c) to bring to the notice of the competent authority defects or abuses not specifically covered by existing legal provisions.”

58.1 Paragraph 2 adds that “any further duties which may be entrusted to labour inspectors shall not be such as to interfere with the effective discharge of their primary duties or to prejudice in any way the authority and impartiality which are necessary to inspectors in their relations with employers and workers.” Paragraph 8 of the accompanying Labour Inspection Recommendation, 1947 (No. 81) more specifically points out that “the functions of labour inspectors should not include that of acting as conciliator or arbitrator in proceedings concerning labour disputes.”

58.2 As pointed out by the CEACR, in its 2006 General Survey on Labour inspection, it is important to avoid “overburdening inspectorates with tasks, which by their nature may in certain countries be understood as incompatible with their primary function of enforcing legal provisions.”⁴²

⁴¹ As developed by Aristeia Koukiadaki in the comparative background report, “an efficient dispute resolution system is one that conserves scarce resources, especially time and money. In the context of dispute resolution, efficiency would refer to dispute resolution methods that serve both employer and employee interests. The notion of equity incorporates concepts such as procedural fairness, equal opportunity, the existence of safeguards—including the ability to appeal decisions to a neutral party—and transparency to prevent arbitrary or capricious decision-making and enhance accountability. An equitable dispute resolution system also has widespread coverage independent of resources or expertise and is equally accessible irrespective of gender, race, national origin, or other personal characteristics and contractual status (e.g. in the case of individuals in unclear or disguised employment relationships). Finally, voice emphasises the element of self-determination in the relationship between the parties. In dispute resolution systems, not only does it capture the extent to which individuals are able to participate in the operation of the dispute resolution system (e.g. in terms of due process) but it can also include the extent to which individuals have input into the construction of the dispute resolution system and into specific mechanisms.”

⁴² General Survey of the reports concerning the Labour Inspection Convention, 1947 (No. 81), and the Protocol of 1995 to the Labour Inspection Convention, 1947, and the Labour Inspection Recommendation, 1947 (No. 81), the Labour Inspection (Mining and Transport) Recommendation, 1947 (No. 82), the Labour Inspection (Agriculture) Convention, 1969 (No. 129), and the Labour Inspection (Agriculture) Recommendation, 1969 (No. 133). International Labour Conference 95th Session, 2006, para. 72. Available at: [https://www.ilo.org/public/libdoc/ilo/P/09661/09661\(2006\)1B.pdf](https://www.ilo.org/public/libdoc/ilo/P/09661/09661(2006)1B.pdf)

59. The Office also recalls that similarly to ILO Recommendation No. 81, paragraph 3 of the Labour Inspection (Agriculture) Recommendation, 1969 (No. 133) – accompanying the Labour Inspection (Agriculture) Convention, 1969 (No. 129), not ratified by Greece⁴³ – provides that:

Conciliation functions entrusted to labour inspectors

“(1) Normally, the functions of labour inspectors in agriculture should not include that of acting as conciliator or arbitrator in proceedings concerning labour disputes.

(2) Where no special bodies for this purpose exist in agriculture, labour inspectors in agriculture may be called upon as a temporary measure to act as conciliators.

(3) In the case provided for by subparagraph (2) of this Paragraph, the competent authority should take measures in harmony with national law and compatible with the resources of the labour department of the country concerned with a view to relieving labour inspectors progressively of such functions, so that they are able to devote themselves to a greater extent to the actual inspection of undertakings.”

60. Finally, the Office recalls the relevant comments made by the ILO supervisory bodies in these areas. In its comments concerning the application of Article 3 (2) of Convention No. 81 in Greece on the issue of the additional functions entrusted to labour inspectors,⁴⁴ the CEACR had previously asked the Government “whether it was considering – in view of the potentially large proportion of work dedicated by labour inspectors to conciliation functions – the separation of the functions of conciliation from those of inspection.”

60.1 The CEACR had noted the Government’s indication “that the Greek Labour Inspectorate (SEPE) is planning to modernize and redesign the labour dispute resolution process, so as to render it more accessible to workers and less time-consuming for labour inspectors, while ensuring the separation of conciliatory and supervisory functions.” The CEACR had also noted the Government’s indication “that the conciliation procedure is preferred by workers in a number of cases over inspections visits (for example, in relation to delayed payment of wages), as an immediate solution can be found for workers.”

60.2 The CEACR had recalled from the 2012 ILO Labour Inspection Needs Assessment Report “that one of the recommendations related to the establishment of a separate unit for the examination of grievances by dispute resolution officers, in view of the fact that there is already a select group of officials specializing in labour disputes at the Ministry of Labour, Social Security and Welfare”. The CEACR had therefore requested the Government “to provide detailed information on the consideration given, in the framework of the plan of the SEPE to modernize the labour dispute resolution process, to create a separate unit with officials specializing in dispute resolution.”

⁴³ For detailed recommendations for the ratification of Convention No. 129 by Greece, see: 2018 ILO Assessment report on necessary amendments of the legal framework regarding inspections in agriculture and recommendations for reforms in line with ILO Convention No. 129.

⁴⁴ https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3255324

61. In some countries (e.g. Australia, France and Spain) where conciliation duties for individual labour disputes are assigned to Labour Inspectorates, different mechanisms exist for the demarcation of their duties. These include, among others, the incorporation of settlement options in the procedure of the labour inspectorates. For instance, in Australia and Spain, settlement options are built into the procedures of the labour inspectorates, as a major step before enforcement. In Australia, the investigation process of the Fair Work Ombudsman (FWO) includes three steps: (a) assessment of the complaint; (b) dispute resolution by FWO mediators, primarily through telephone services; and (c) consideration of enforcement options by fair work inspectors.⁴⁵ In France and Spain, these mechanisms include the establishment of codes of ethics applicable to labour inspectors (e.g. France and Spain).⁴⁶
62. In addition, different models of conciliation can be provided on the basis of whether they are mandatory or not. In certain systems, pre-court administrative conciliation is mandatory for individual labour disputes (e.g. Spain), or there is an obligation of notification of the authorities prior to lodging a complaint before an Employment Tribunal (e.g. in the UK). In other systems, mandatory conciliation is built into the judicial proceedings (e.g. France).⁴⁷
63. The Office understands that the current system, whereby SEPE is authorized to intervene in a conciliatory manner to resolve individual labour disputes, presents a number of advantages but also certain shortcomings.
- 63.1 Among the advantages, it is to be noted that the conciliation procedure before SEPE seems to be perceived as being clear, uncomplicated and informal. As provided by the national background report, *"conciliation meetings and hearings do not have the appearance and practice of court proceedings. The process is characterized by its quickness. The meeting with the inspector is set for a relatively short time, which varies by region, but usually it does not exceed 20 days. The process also has the advantage of being provided free of charge. Consequently, lower income workers can appeal at no cost. A similarly positive factor is that in many cases, and especially in the province, conciliators know the companies and their employees, which can help the conciliation role. Finally, it is a positive factor that the Labour Inspectorate is located throughout the country and in particular in the capitals of all the counties. Therefore, it is easily accessible. (...) Finally, there is the possibility of appeal, although it seems to be rarely exercised"*.⁴⁸
- 63.2 The shortcomings include, firstly, the issue of the compatibility of the task of conciliation of labour inspectors with their mandate of control and enforcement, as provided by Article 3 (2) of Convention No. 81. The settlement of labour disputes represents a large portion of the work of the labour inspectorate in Greece, and has been increasing in recent years. A second issue relates to the qualification and training of labour inspectors on conciliation matters. Finally, the limited resources and the lack of staff of the SEPE are to be taken into account when assessing the performance of the system.⁴⁹

⁴⁵ Ebisui et al., ILO 2016., p.14.

⁴⁶ Koukiadaki, "Individual and collective labour dispute settlement system".

⁴⁷ Ibid.

⁴⁸ See national background report prepared by Prof. Kostas Papadimitriou (Feb. 2020) (unpublished)

⁴⁹ Ibid.

64. The Office recalls the conclusions of the 2017 ILO Assessment of the Greek Labour Administration (point 1.3.1.2.)⁵⁰, according to which:
- 64.1 (...) *"The labour inspection has been affected negatively by the budgetary cuts, closing of local offices and reduction of staff and the labour inspectors have been assigned to carry out diverse functions, including administrative tasks, that take away time for doing labour inspections. Currently labour inspectors' functions embrace labour inspection as such in the areas of labour relations and occupational safety and health, but also other functions"*.
- 64.2 For instance, labour inspectors are assigned to or choose to conduct conciliations between employers and workers in cases of individual labour disputes. The labour inspectors spent up to half of their time on conciliation of individual labour disputes, despite the fact that the ILO Labour Inspection Recommendation 81 states that, *"The functions of labour inspectors should not include that of acting as conciliator or arbitrator in proceedings concerning labour disputes."* These functions take away too much valuable time from the labour inspectors to fulfil their core role (law enforcement), related to protecting workers from work hazards and to promote and ensure that workers are paid and treated according to the current labour laws.
- 64.3 Thus, labour inspectors should prioritize the performance of inspections and levying of fines when the labour law is not fulfilled (law enforcement) rather than spending their time on solving individual labour disputes, unless there are specific circumstances that justify this or this explicitly forms part of the overall labour inspection strategy (for example by providing counselling to small or poor employers instead of imposing sanctions). The MoLSA informs that due to the economic crisis and the slow judicial procedures in the civil courts, it is a political choice to use SEPE to help solving labour disputes, particularly those that involve small and very small enterprises. The MoLSA is of the opinion that *"Taking into account the time for the settlement of industrial disputes before civil courts, the undervaluation of SEPE's role concerning industrial disputes would generate an important gap, especially under the current situation of the labour market. As long as the acceleration of judicial procedures is not possible, we must envisage how industrial disputes should become more substantial"*.
- 64.4 Specific functional arrangements should be made to coordinate labour inspection activities with other government services engaged in similar tasks (mainly with MoLSA services), such as Social Security (EYPEA), the Independent Authority for Public Revenues, OMED and the judiciary. In this regard, a **coordination body** could be considered to diffuse best practices, create joint criteria, and disseminate experiences.
- 64.5 The conclusions of the 2017 ILO Assessment of the Greek Labour Administration also provided that *"more than twenty organizational structures exist to hold national tripartite social dialogue discussions on different aspects of labour (...). They are generally underutilized and not well-equipped. It would be important to strengthen the National Employment Committee, a Government Employment Council and/or the Supreme Labour Council (ASE); or alternatively merge them into one entity and strengthen that one, in order to avoid fragmentation of the discussion."* (emphasis added).

⁵⁰ Pages 25-26.

65. The Office also notes that, to its knowledge, no similar assessment of needs has been undertaken with respect to the performance, functioning, capacities and resources of OMED. This lack of external evaluation of OMED may complicate the assessment of the risks and opportunities of reallocating individual disputes conciliation services within the dispute resolution system.

Recommendations

- Recommendations** 66. Recalling the general guidance provided by international labour standards for the effective functioning of national labour dispute systems, in particular that the notion of ‘effectiveness’ of dispute resolution systems entails various parameters, such as accessibility, fairness, impartiality, informality, rapidity, affordability, consensus and expertise; and recalling also that ensuring the effectiveness of the dispute resolution system implies securing access to effective and enforceable outcomes of dispute resolution procedures, including access to effective remedy, and participation of stakeholders in the design and operation of the dispute resolution systems (see attached note on international labour standards and dispute resolution), the Office recommends that various conditions be established, or strengthened, to ensure the effectiveness of conciliation services on individual labour disputes.⁵¹

⁵¹ The differentiation between the processes for individual and collective labour disputes, as provided for in the current legislation regarding the role of SEPE, should be maintained in any case.



Recommendations

67. Specifically, it recommends – in line with Article 3 of Convention No. 81 – not to overburden labour inspectors with additional duties which may interfere with the effective discharge of their primary duties or prejudice in any way the authority and impartiality, which are necessary to inspectors in their relations with employers and workers.
- This might be realised through various scenarios. It might imply, for instance, establishing a separate unit within the labour administration for the examination of grievances by dispute resolution officers. It might also imply assigning individual labour dispute conciliation services to a list of conciliators appointed by bipartite boards. Alternatively, it might imply transferring conciliation functions currently allocated to SEPE to a central body, such as OMED. Given that the Greek law distinguishes between two types of individual dispute conciliation processes under Article 23 of Law 4144/2013, consideration could also be given to transferring only one of these two types of conciliation processes to OMED.⁵²
 - However, in all case scenarios – whether individual labour dispute conciliation services remain with the labour administration, or whether they are transferred, in full or in part, to OMED, various parameters would need to be secured for the system to function effectively.
 - In the event, though, that only one of the two individual dispute types, identified under Article 23 of Law 4144/2013 (i.e. either disputes with a collective interest, or ‘purely’ individual disputes) would be transferred to OMED, the Office recommends clarifying the definition of the two types of individual disputes under Article 23 of Law 4144/2013, in order to limit misunderstandings in these areas. It also recommends clarifying which authority has the power to decide, in practice, whether the dispute under consideration belongs to the first or the second type – in order to establish whether the dispute under consideration should be processed by OMED.⁵³
 - Moreover, in all case scenarios, the areas of synergies, cooperation and coordination between OMED and SEPE should be identified. Such areas might include, in particular, training strategies, as detailed below.
 - Furthermore, in all case scenarios, the Office recalls the importance of ensuring the respect and the implementation of the principles of transparency, independence, speed, accessibility and quality of services to ensure the effectiveness of labour dispute resolution system.
 - Finally, in all case scenarios, the Office recommends taking appropriate measures to ensure that conciliation services over individual disputes will remain available and effective during any **transitional period** that might be required in the context of reorganising of the labour dispute system. Depending on the option chosen, the transitional period might be of relatively long duration. The Office recommends ensuring that the reorganization of the system, whatever form it might take, will not impact negatively access to effective conciliation services for workers and employers across the country.

⁵² The Office understands that Article 23 of Law 4144/2013 distinguishes two types of conciliation processes. The first one refers to individual disputes that entail a collective interest. The issues at stake could be for instance, the non-granting by the employer of a prescribed allowance, the non-observance of health and safety conditions, the illegal employment of overtime workers, the non-observance of the employer’s obligation to provide trade union facilities, etc. In this case, because of the collective interest at stake, the request for conciliation can be made by the employer of the trade union organization. The second type of conciliation process over individual disputes refers alleged misapplication of labour laws and regulations. It is a legal dispute *stricto sensu* between one or more employees individually and an employer, arising from their labour relations. This second type of conciliation come close to a “pre-trial settlement”, and may contribute to preventing the parties from going to court.

⁵³ This would also include clarification in respect of the conciliation procedure established under Article 13 of Law 1876/1990.

68. Should the individual labour dispute conciliation services remain within the remit of the labour administration, the Office recalls that ILO Recommendation No. 81 provides that “the functions of labour inspectors should not include that of acting as conciliator or arbitrator in proceedings concerning labour disputes”. This might imply in particular:

- i. Undertaking an **objective and independent evaluation of the conciliation functions and services currently provided by SEPE**, in order to better assess the strengths and weaknesses of the current system, before making any decision on its reorganization;
- ii. As emphasised by the CEACR, in view of the potentially large proportion of work dedicated by labour inspectors to conciliation functions, ensuring the **separation of conciliation from inspection functions**.⁵⁴
 - Such separation would also better reflect the fundamental differences in the culture and approaches of the two functions: on the one hand, conciliation aims at the amicable settlement of the conflict and the reconciliation of the points of view; on the other hand, inspection is intrinsically linked with the notions of enforcement and sanctions.
 - Should dispute resolution operate alongside inspection, in the event of disputes incurring administrative/criminal sanctions imposed by the Labour Inspectorate, it should also be considered to introduce a requirement for cross-referral of disputes to labour inspectors so as to ensure effective enforcement.
- iii. As pointed out by the CEACR on the basis of the ILO 2012 Labour Inspection Needs Assessment Report (Greece), **establish a separate unit for the examination of grievances by dispute resolution officers**, in view of the fact that there is already a select group of officials specializing in labour disputes at the Ministry of labour;⁵⁵
- iv. As provided by the ILO 2012 Labour Inspection Needs Assessment Report, **develop an Action plan for SEPE that establishes prioritized objectives**, a timeline and roles and responsibilities for strengthening the overall functioning and effectiveness of the labour inspection system in Greece. As emphasised in the Report, such action plan could also serve as the basis for mobilizing resources and technical assistance (particularly from the ILO) towards achieving the plan’s objectives;
- v. Also, as emphasised by the ILO 2012 Labour Inspection Needs Assessment Report, undertake, once the economic situation improves, a **review of the human and material resources available to the labour inspectorate** to make sure that it is adequately staffed and resourced to effectively carry out its mandate;

⁵⁴ https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3255324

⁵⁵ https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3255324

vi. In line with the above, invite SEPE to introduce a **clear plan for the reorganization of its structure and functioning** with a view to ensuring the separation of the functions of conciliation from those of inspection. This plan would address in particular the financial, technical and human resources needed to implement the reorganization. Such plan would be adopted following consultations with the social partners;

vii. Finally, in line with good practice from other dispute resolution systems,⁵⁶ and depending on the option chosen, **clear guidance should be provided in terms of the procedure and the scope for cross-referral of claims, if relevant**.

- The option of establishing a separate unit for the examination of grievances by dispute resolution officers was also foreseen in the 2018 Assessment report on necessary amendments to the legal framework regarding inspections in agriculture and recommendations for reforms in line with ILO Convention No.129, which provided in this respect that: *“There can be no doubt that the SEPE should use this opportunity (tackling the coverage of the agriculture sector) to design a strategy for combining efforts and curbing non-traditional tasks. Moreover, these tasks could be progressively deviated to other bodies (for instance, functions of general information to the public could be undertaken by general information offices within the Ministry or by the Decentralised Administrations at territorial level) and the conciliation applications by workers should be handled by inspectors in the course of field inspection or be left to specific mediators (picked up from national or local lists), in particular those referred to class action disputes”*.⁵⁷
- Furthermore, the 2018 Assessment report pointed out that *“Conciliation procedures may well be part of the Ministry strategic goals, however labour inspection should be partially discharged of these tasks, in particular those related to mediation procedures in respect of individual applications. SEPE should take the necessary measures to down-size non-traditional inspection tasks (conciliation, supervision of internal regulations of companies) with a view to providing broad and better coverage to all sectors subject to inspection, including the agriculture sector. As regards to the conciliation procedures, legislative steps could be taken with a view to assigning such conciliation tasks to other officials, or to lists of conciliators appointed by bipartite boards. The labour inspectors could still deal with a great part of these mediation functions (in particular individual ones) in the course of their inspections”*.⁵⁸

⁵⁶ Koukiadaki, “Individual and collective labour dispute settlement system” Section 4.2.

⁵⁷ Page 29

⁵⁸ Page 71

Recommendations

69. Ensure effective, up-to-date and continuous training on conciliation techniques, labour laws and specific issues (e.g. dispute resolution in SMEs and reaching out to workers in vulnerable situations) for the relevant officers, in order to enable them to address the greater complexity and diversity of individual disputes; and to limit heterogeneity in the handling of labour disputes throughout the country. This might include taking specific measures such as for instance:

- Develop a regular (e.g. two-year) training plan based on institutional needs, which would include training in up-to-date conciliation techniques; revised labour laws and regulations and harmonizing criteria for their coherent implementation; strategic planning and management training; policy design; the functioning of the labour administration, etc.
- Such training plan would be available to all staff, located both in headquarters and elsewhere in the country. It would use different training techniques, including for instance face-to-face training, on-the-job-training, e-learning, etc.
- Such training plan could also include participation in relevant trainings organized by the ILO International Training Centre.
- It could also be considered to examine whether OMED, under certain conditions, could play a role in providing training to officers in charge of conciliation.

69.1 As to the issue of the **advisory function of labour inspectors**, it could be considered to separate within SEPE the function of advice and information from the conciliation and inspection functions. The Office recalls the recommendation of the 2018 Assessment report that *“the functions that inspectors carry out in relation to advice and/or information to citizens, especially workers, could be progressively migrated to specific labour information offices (e.g. Decentralized Administrative Offices), to internet help desk services such as IRIS131 or redirected to Trade Unions offices.”*

- It could also be considered to examine whether the model of the Citizen Service Centres (KEP) could be of any support in the establishment of the advisory/information service of SEPE.
- Such service could also include the provision of **targeted guidance and training to employers** and employees by dispute resolution agencies can contribute significantly to dispute prevention. The cases of Australia and the UK are instructive in this respect. In Australia, this involves the development by the Fair Work Ombudsman (the equivalent of SEPE) of an Online Learning Centre, offering facilities such as programmes to assist employees and employers in holding difficult conversations with each other. In the UK, ACAS delivers yearly a number of advisory projects with individual companies on subjects such as managing change.⁵⁹

⁵⁹ Koukiadaki, A. *Comparative Report*.

Recommendations

69.2 As to the issue of the **distinction between different types of disputes within the national legal system**, the Office recalls that it is a matter to be decided at the national level. The Office understands that in the case of Greece, the type of intervention (i.e. conciliation or inspection) by SEPE is dependent on the nature of the complaint and the will of the complainant.

- In some countries, monetary and administrative complaints are distinguished from other types of complaints: in the case of former, mediation/conciliation are not formally offered.⁶⁰ In other systems (e.g. the UK), there are parallel systems of enforcement and dispute resolution, involving early conciliation.⁶¹ Where enforcement and dispute resolution through conciliation/mediation is provided by a single agency (e.g. Australia, Spain), settlement options are built into the procedures of the labour inspectorates, as a major step before enforcement. The investigation process of the Fair Work Ombudsman (FWO) in Australia, for instance, includes three steps: (a) assessment of the complaint; (b) dispute resolution by FWO mediators, primarily through telephone services; and (c) consideration of enforcement options by fair work inspectors.

69.3 Finally, it could also be considered to introduce a Code of ethics (drawing on relevant ILO Conventions, the provisions of the Labour Code and related legislation in Greece) that would set out the duties and rights of labour inspectors.

70. Should the conciliation services for individual labour disputes be transferred in full or in part to OMED,⁶² the Office recommends ensuring that this decision be based on the results of an external assessment (audit) of the performance, functioning, capacities and resources of OMED to absorb additional functions. As detailed below (point 6.2), such assessment would need to address specifically the conditions to be established, or strengthened, to allow OMED to provide conciliation services on individual labour disputes, in addition to its current competences. Furthermore, the following specific parameters for the effectiveness of the system, would have to be taken into account:

70.1 *Independence and impartiality.* The Office understands that OMED was established as an independent private entity. Should conciliation services on individual labour disputes be transferred within its competences, the Office recommends guaranteeing the independence and impartiality of OMED.

⁶⁰ Ebisui, M., Cooney, S., Fenwick, C., *Resolving individual labour disputes: A comparative overview*, ILO 2016. Available at: https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_488469.pdf

⁶¹ For instance, in the context of the National Minimum Wage Regulations in the UK, if the Her Majesty's Revenue and Customs (HMRC), which is responsible for enforcement, find that the employer has not paid the correct wage rates, they will send them a notice for the arrears plus a fine for not paying the minimum wage. HMRC can take them to court on behalf of the worker if the employer still refuses to pay. Workers can also go directly to the employment tribunal themselves (in this case, the ACAS early conciliation scheme applies).

⁶² On the basis of the distinction established under Article 23 of Law 4144/2013.

Recommendations

- This might include taking specific measures, such as evaluating whether the existing rules are fit for purpose or need to be adjusted to take into account the new duties of OMED (e.g. revision of the Rules of procedures of OMED, revision of its Code of conduct, etc.).
- Further, independence could be promoted, for instance, through the introduction of a requirement in legislation that the services provided by OMED shall not be subject to directions of any kind from any Minister as to the manner in which it is to exercise its functions under any enactment.⁶³
- Moreover, adding conciliation services on individual labour disputes to the competences of OMED will undoubtedly call for an increase in the budget of the institution. Measures should be taken to ensure that, should OMED's budget continue to be provided by the Labour Ministry, this financial dependency will not interfere with OMED's independence and impartiality. The Office understands that OMED's budget is provided through contributions by employers' and workers' organizations. The Office recommends consulting with the social partners to determine how the budget of OMED would be increased should OMED be tasked with additional duties. Ensuring OMED's independence and impartiality should remain a key parameter in this discussion.

70.2 *Geographical accessibility.* The Office understands that contrary to SEPE that has the capacity to deploy labour inspection services across the country, including the various islands, OMED is a centralized organization with limited geographical representation (offices are in Athens and Thessaloniki only). Should conciliation services be transferred to OMED, the Office recommends ensuring that the limited geographical representation of OMED will not, in practice, prevent access to dispute resolution services for individual labour disputes arising in all parts of the national territory, including remote regions and islands.

- This might involve taking specific measures, for instance confidential advice and information on employment rights, rules and dispute resolution options over the telephone (such as those established by ACAS in the UK) – while ensuring that face-to-face services will always remain available – and cross-referral of claims with the labour inspectorate (e.g. in the case of Australia).

⁶³ For similar examples, see, among others, the FWC's Member Code of Conduct in Australia that provides that "the President is not subject to direction by or on behalf of the Commonwealth" (<https://www.fwc.gov.au/documents/documents/resources/membercodeconduct.pdf>).

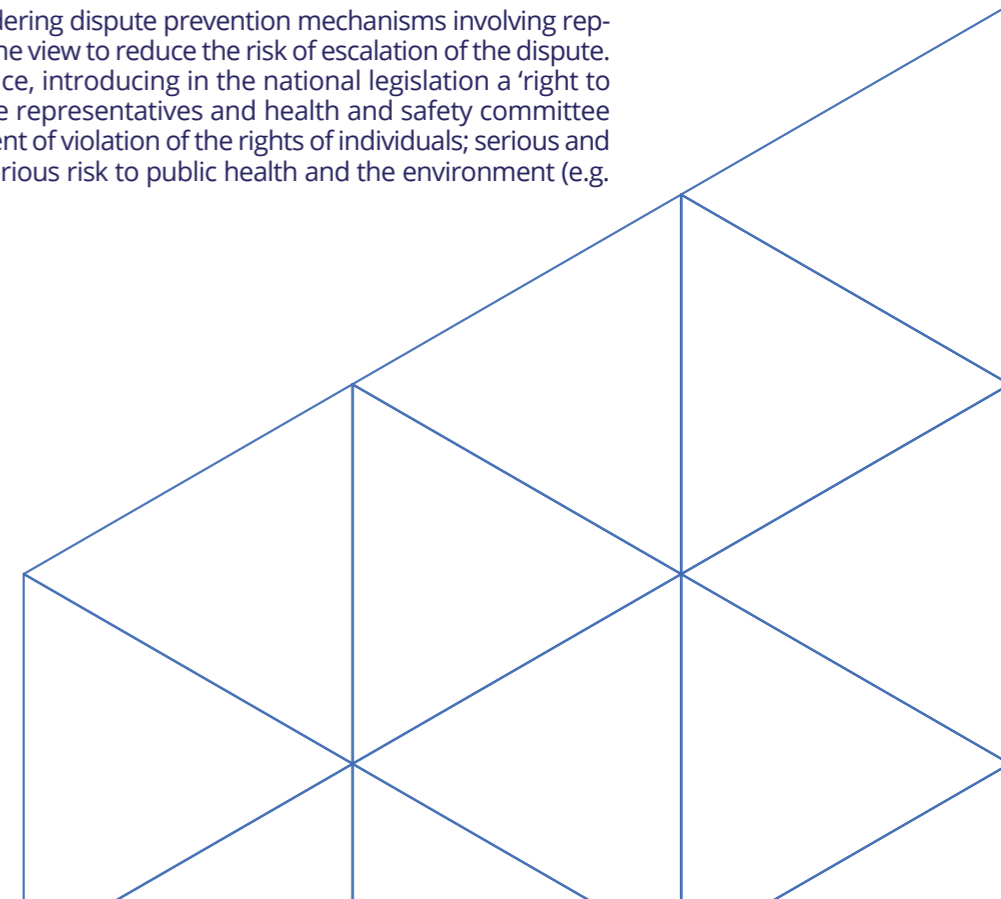
Recommendations

70.3 *Effective access without discrimination.* Should conciliation services on individual labour disputes be provided by OMED, the Office recommends ensuring effective access to such conciliation services for all workers, without discrimination, irrespective of race, colour, sex, religion, political opinion, national extraction or social origin, or any other personal characteristics, and irrespective of contractual status – including for workers in unclear or disguised employment relationships. This recommendation is consistent with the overall objective of the present project on tackling undeclared work. It is also particularly important in light of the prevalence of migrant workers in certain sectors, who may not speak Greek.

- This might include taking specific measures, such as targeted campaigns and advice concerning certain categories of workers in vulnerable situations and/or sectors, workplaces, or geographical areas where violations of labour protection legislation are prevalent, or where workers are often unaware of applicable protective laws and standards. It might also include dissemination of information about bipartite mechanisms for dispute prevention and resolution available at the enterprise level.
- Cooperation with trade unions and other organizations would be recommended, including, for instance, migrant resource networks, to raise awareness of labour rights and provide training about, among others, false self-employment (as in the case of Australia).

70.4 *Affordability.* The Office understands that the current conciliation services delivered by SEPE are provided free of charge and that lower income workers can appeal at no cost. Should conciliation services on individual labour disputes be provided by OMED, the Office recommends ensuring that these services be similarly provided free of charge (as is the case in many other national legal systems).

- This might also involve taking specific measures such as providing detailed information about the process and the labour standards involved in the dispute before the beginning of the process and acceptance by the parties. These may be incorporated, for instance, in a handbook outlining the dispute resolution process.
- It may also include considering dispute prevention mechanisms involving representative bodies, with the view to reduce the risk of escalation of the dispute. These may be, for instance, introducing in the national legislation a 'right to notify' for both employee representatives and health and safety committee representatives in the event of violation of the rights of individuals; serious and imminent danger; and serious risk to public health and the environment (e.g. as in France).



Recommendations

70.5 *Simplicity of the procedure.* The Office understands that the current conciliation services before SEPE are perceived as being clear, uncomplicated and informal. Should conciliation services on individual labour disputes be provided by OMED, the Office recommends ensuring that these services be provided in a similarly clear, simple and uncomplicated manner. As mentioned above, consideration might be given to developing a handbook outlining the process for dispute resolution.

70.6 *Timely and efficient processing.* The Office understands that the current conciliation services delivered by SEPE are characterized by its speed (usually not more than 20 days). Should conciliation services on individual labour disputes be provided by OMED, the Office recommends ensuring that they should be similarly uncomplicated, user-friendly and as rapid as possible in order to ensure that individual labour disputes are quickly resolved.

- The importance of the speed of the conciliation procedure is a principle that should apply irrespective of the size of the company. However, it is particularly relevant in small and medium-sized enterprises (SMEs). Hence, consideration might be given to adopting specific measures to facilitate prompt access to effective conciliation services for workers and employers in SMEs.
- This might include taking specific measures such as offering specialised telephone inquire services for all firms, while allocating a specific line dedicated to disputes in SMEs. It may also include offering dispute prevention services (e.g. educational campaigns), specifically tailored to the needs of employers and workers in SMEs, given the prevalence of companies with up to 49 employees (e.g. as in the case of Australia).

70.7 *Effective training and qualification.* The Office understands that OMED has already a certain number of trained and experienced mediators for collective labour disputes. Should conciliation services on individual labour disputes be provided by OMED, the Office recommends ensuring effective, up-to-date and continuous training in conciliation techniques to address the greater complexity and diversity of individual disputes.

- This might include taking specific measures such as for instance, introducing/amending existing codes of ethics for mediators and conducting regular evaluations of the performance of the service (as in the UK, for example).
- It might also include taking specific measures such as for instance:
 - Developing a regular (e.g. two-year) training plan based on institutional needs, which would include training in up-to-date conciliation techniques; revised labour laws and regulations, and harmonizing criteria for their coherent implementation; strategic planning and management training; policy design; the functioning of the labour administration, etc.
 - Such training plan would be available to all staff, located both in headquarters and elsewhere in the country. It would use different training techniques, including for instance face-to-face training, on-the-job-training, e-learning, etc.
 - Such training plan could also include strengthening coordination with the ILO International Training Centre in order to the exchange of mediation and conciliation training strategies with other countries.



Recommendations 71. More generally, the Office recommends:

- Ensuring that the decision to be taken regarding the allocation of conciliation services for individual labour disputes – to either SEPE or OMED – be based on the outcome of sound and meaningful social dialogue between the Government and the Greek social partners. It also recommends recognizing the role played by the social partners in the operation of the dispute prevention and resolution system. This dialogue is initiated by the present project and should be pursued regularly on the long term, beyond the project, to assess the effectiveness of the system.
- Recognizing the role played by the social partners, not only in the establishment of, but also in the operation of the dispute prevention and resolution system. Mechanisms considered here could include, for instance, the creation of tripartite administrative committees, as in the case of the Local Administrative Committees of the Social Insurance Institute (IKA).
- Ensuring that this decision be based on the results of an external assessment (audit) of the performance, functioning, capacities and resources of OMED that would address specifically the conditions to be established, or strengthened, to allow OMED to provide conciliation services on individual labour disputes, in addition to its current competences. Such conditions would need to guarantee a number of key parameters, including geographical coverage, non-discrimination and accessibility, affordability, rapidity and efficiency, and continuous training. Such assessment of OMED would facilitate the evaluation of the risks and opportunities of reallocating conciliations services over individual disputes within the Greek dispute resolution system. The assessment of OMED would also supplement the above-mentioned recommended evaluation of the conciliation services currently provided by SEPE.
- Taking into account the interplay of the individual labour dispute resolution mechanisms with judicial and human rights/equality institutions, as well as with other possible tripartite bodies, and examining best ways to strengthen coordination and synergies.⁶⁴
The Office understands that only a minority of individual cases currently brought to conciliation relate to discrimination or privacy protection issues; and that coordination with specialized institutions in these areas would therefore be relatively easy without severely impacting the rapidity of the procedure.
- Taking appropriate measures to ensure that conciliation services over individual disputes will remain available and effective during any **transitional period** that might take place in the context of reorganising the labour dispute system. Depending on the option chosen, the transitional period might be relatively long. The Office recommends ensuring that the reorganization of the system, whatever form it might take, will not impact negatively access to effective conciliation services for workers and employers throughout the country.

⁶⁴ In respect of the relationship between social dialogue and judicial mechanisms, joint procedures for the resolution of individual labour disputes (except for unfair dismissals) have been established, for instance, in Spain through collective agreements. Some joint mechanisms are integrated into the public administration of the autonomous communities or the labour relations councils, while others function as a substitute for administrative conciliation. These have the potential to improve both the system's efficiency and access to its services, given the limited efficacy of administrative conciliation and the delays associated with action through the courts. In respect of the interplay of dispute resolution mechanisms with human rights bodies, the operation of the latter can expand the options available for dispute resolution and enhance users' choices and access, provided that users are well informed about the benefits of each option and that there is clarity in terms of the remit of such mechanisms vis-à-vis other labour dispute resolution mechanisms. In this respect, reconsidering the remit of the human rights bodies can also contribute to the effective functioning of dispute resolution systems. For instance, the Equality and Human Rights Commission in the UK supports strategic litigation, advising on and funding cases which are not fundable under public legal aid schemes, such as employment tribunal claims, and intervening in judicial review applications concerning labour legislation. In Belgium, the National Human Rights Institution is responsible, among others, for monitoring respect of the freedom of association or the freedom of expression (see Koukiadaki, A. Comparative Report).

Recommendations

- 72.** Regardless of whether conciliation and information services remain with SEPE or are transferred to OMED (in full or in part):⁶⁵
- Ensuring an objective and regular evaluation of the performance of the labour dispute system by an independent authority, in consultation with the social partners, will be instrumental to identifying and addressing potential dysfunctions, inefficiencies or conflicts of interests; and
 - Ensuring the continuous, relevant and up-to-date training of the officers in charge of conciliation – whether in SEPE or in OMED – will also be key to the effectiveness of the system.
- 73.** It should also be considered to examine, in consultation with the social partners, whether the existing experience of mediation in civil matters could be of any support or inspiration in the discussion about the labour dispute conciliation system. In particular, the training standards and processes of mediators in civil matters may serve as inspirational model for the training of conciliators in individual labour disputes (i.e. training over a long period of time, by selected and specialized trainers, organization of exams to assess successful candidates, etc.).
- 74.** The Office recommends that any draft legislation in the areas under consideration be shared sufficiently well in advance with relevant employers' and workers' organizations, as well as with the Office, in order to allow for timely consultations and tripartite social dialogue.
- 75.** Finally, the Office recommends improving the collection of reliable data on labour dispute resolution processes in Greece – including with respect to the services currently provided by OMED and SEPE – as well as on key characteristics of labour disputes, and on the outcomes of conciliation or mediation services.
- 76.** The Office is available to provide further technical advice on any reforms concerning the organization or strengthening of conciliation services for individual labour disputes in Greece, be they allocated to SEPE or OMED, in particular:
- provide the technical assistance listed in the ILO 2012 Labour Inspection Needs Assessment Report;
 - provide technical assistance in designing a performance evaluation of OMED, drawing on comparative practice; and
 - in collaboration with the ILO International Training Centre, provide best practices of mediation and conciliation training strategies from other countries including methodologies for assessing training needs.

⁶⁵ As mentioned above, it could be considered to transfer only one of the two types of conciliation processes over individual disputes established under Article 23 of Law 4144/2013.

Compulsory arbitration of collective labour disputes

Compulsory arbitration of collective labour disputes

- 77.** Another major issue of discussion concerning the Greek system of individual and collective labour dispute resolution is that of compulsory arbitration in collective labour disputes. This issue was heavily addressed in recent years by the ILO supervisory bodies. The Office recalls in particular the conclusions of the ILO Committee on the Application of Standards (CAS) at the 107th International Labour Conference (June 2018) and the 2019 Observation of the CEACR concerning the application of Convention No. 98 (See Annex II), as well as the conclusions of the ILO Committee on Freedom of Association in Cases Nos. 2261/2003 and 2820/2010.
- 77.1** In its follow-up to the conclusions of the CAS, the CEACR in its 2019 Observation on the application of Convention No. 98 trusted that *“the Government will continue to engage with the social partners, both during its review of the law and within the context of the constitutional reform, to bring this mechanism into full compliance with the obligation to promote free and voluntary collective bargaining by eliminating, except in the cases described above, the possibility of a single party to have recourse to compulsory arbitration if the other party rejects the mediation proposal. It requests the Government to provide detailed information in this regard.”*⁶⁶
- 77.2** The issue of compulsory arbitration has also been the subject of successive legal reforms at the national level, in particular following decisions by supreme judicial and administrative authorities. The last major reform of the system of compulsory arbitration was introduced by Law No. 4635/2019 in 2019.
- 77.3** The Office also recalls in this respect the Recommendation No. 10 of the Experts Group established to review labour market institutions (2016) to which the ILO contributed, according to which *“(…) The system of arbitration was renewed recently and should be evaluated by the end of 2018 to assess its role in collective bargaining.”*⁶⁷
- 78.** Against the background of these successive legal changes at the national level, and in light of previous ILO recommendations, the Office recommends that the Government should engage with the social partners with a view to undertaking a tripartite assessment of the redesigned regulatory framework for the settlement of collective labour disputes, in particular concerning the regulation of compulsory arbitration. The Office remains available to provide further technical assistance in this area if the Government and the social partners so decide.

⁶⁶ Observation (CEACR) - adopted 2018, published 108th ILC session (2019 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98) - Greece (Ratification: 1962). See: https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3962772

⁶⁷ Recommendations of the Expert Group for the Review of Greek Labour Market Institutions, September 2016. See: <http://www.ieri.es/wp-content/uploads/2016/10/Final-Report-Greece-September-2016.pdf>

Policy recommendations on facilities for workers' representatives and trade union members to exercise their rights (Full version)

Introduction

- 79.** Facilities for trade union representatives and trade union members to exercise their rights are of paramount importance for labour relations in Greece. In the last decade successive changes were introduced in this area, some of which were introduced following comments by the ILO supervisory bodies, in particular by the ILO Committee on the Application of Standards at the 107th International Labour Conference (June 2018) and by the Committee of Experts on the Application of Conventions and Recommendations (CEACR) with respect to the application of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).⁶⁸
- 80.** The Office understands that further legal changes are planned in the area of facilities for trade union representatives and trade union members to exercise their rights.
- 81.** The Office recalls that a number of Conventions and Recommendations deal directly or indirectly with facilities for workers' representatives and trade union members, in particular the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); the Right to Organise and Collective Bargaining Convention, 1949 (No. 98); the Workers' Representatives Convention, 1971 (No. 135); Workers' Representatives Recommendation, 1971 (No. 143); the Labour Relations (Public Service) Convention, 1978 (No. 151), the Collective Bargaining Convention, 1981 (No. 154); the Collective Agreements Recommendation, 1951 (No. 91); and the Labour Relations (Public Service) Recommendation, 1978 (No.159).
- 82.** Systems of industrial relations are intertwined with the history of the Nation States where they have been instituted. The Workers' Representatives Convention, 1971 (No. 135) states in Article 2 that:
- a. “[Such] facilities in the undertaking shall be afforded to workers’ representatives as may be appropriate in order to enable them to carry out their functions promptly and efficiently.*
- b. In this connection account shall be taken of the characteristics of the industrial relations system of the country and the needs, size and capabilities of the undertaking concerned.*
- The granting of such facilities shall not impair the efficient operation of the undertaking*
- c. concerned.”*

Policy recommendations on facilities for trade union representatives and trade union members to exercise their rights

⁶⁸ Observation (CEACR) - adopted 2018, published 108th ILC session (2019) – Right to Organise and Collective Bargaining Convention, 1949 (No. 98) - Greece (Ratification: 1962).

83. In the same vein, the European Union has pledged to take into account the diversity of national systems while recognizing and promoting the role of the social partners at European level (Article 152 of the Treaty of the Functioning of the European Union (effective since 1958 [2009 under its current name])).
84. The notion of a workers' representative has been defined in Article 3 of the Workers' Representatives Convention, 1971 (No. 135). In combination with Article 1, this definition refers to workers' representatives who function within an undertaking and covers both:
- i) *the trade union representatives, namely, representatives designated or elected by trade unions or by members of such unions; and ii) elected representatives, namely, representatives who are freely elected by the workers of the undertaking in accordance with provisions of national laws or regulations or of collective agreements and whose functions do not include activities which are recognised as the exclusive prerogative of trade unions in the country concerned.*
85. International labour standards provide further insight as to the role of representatives designated or elected by trade unions as opposed to workers' representatives, especially with respect to their role in the process of collective bargaining. The Collective Agreements Recommendation, 1951 (No. 91), sets out, under Paragraph II 2.1:
- ii) *"[...] the term collective agreements means all agreements in writing regarding working conditions and terms of employment concluded between an employer, a group of employers or one or more employers' organisations, on the one hand, and one or more representative workers' organisations, or, in the absence of such organisations, the representatives of the workers duly elected and authorised by them in accordance with national laws and regulations, on the other."* [emphasis added]



Protection against anti-union discrimination

86. The Office understands that Greek Law 1264/1982 enshrines a general principle of protection against anti-union discrimination based upon a worker's membership in a trade union. The Law does not include a provision facilitating the proof of such a kind of discrimination through reversal of the burden of proof. A discriminatory dismissal will be null and void. The dismissal of trade union leaders is subject to a preventive authorization of the bipartite Committee for the protection of trade union officers. Authorization can only be given on a number of limited important reasons, listed in the law.
87. The Office recalls that Article 1 of ILO Convention 98 provides that:
- "1. Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.*
- 2. Such protection shall apply more particularly in respect of acts calculated to [...] (b) cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours."*
88. The Office also recalls that Article 3 of ILO Convention No. 98 sets out that States have to ensure the establishment of "a machinery appropriate to national conditions for the purpose of ensuring respect for the right to organise". The absence of a mechanism providing the reversal of the burden of proof in cases of anti-union discrimination is at variance with such an obligation. The ILO Workers' Representatives Recommendation 1971 (No. 143) states in this respect that:
- "(1) Where there are not sufficient relevant protective measures applicable to workers in general, specific measures should be taken to ensure effective protection of workers' representatives.*
- (2) These might include such measures as the following:*
- (e) provision for laying upon the employer, in the case of any alleged discriminatory dismissal or unfavourable change in the conditions of employment of a workers' representative, the burden of proving that such action was justified;"*
89. The Committee on Freedom of Association (CFA) as well as the Committee of Experts on the Application of Conventions and Recommendations⁶⁹ have drawn attention to the Workers' Representatives Recommendation, 1971 (No. 143) in this respect.
90. In the observations of the CEACR concerning the application of Right to Organise and Collective Bargaining Convention, 1949 (No. 98) in Greece, the CEACR noted the following in 2018:⁷⁰ "In its previous comments, following concerns raised by the GSEE, the Committee had requested the Government to provide information and statistics relating to complaints of anti-union discrimination and any remedial action taken. [...] **The Committee requests the Government to continue to provide information and statistics relating to complaints of anti-union discrimination and any remedial action taken**".

⁶⁹ COMPILATION (ILO), 2018, para. 1146 and International Labour Conference, 101st Session, 2012, Giving globalization a human face, Report of the Committee of Experts on the Application of Conventions and Recommendations (articles 19, 22 and 35 of the Constitution), no. 191.

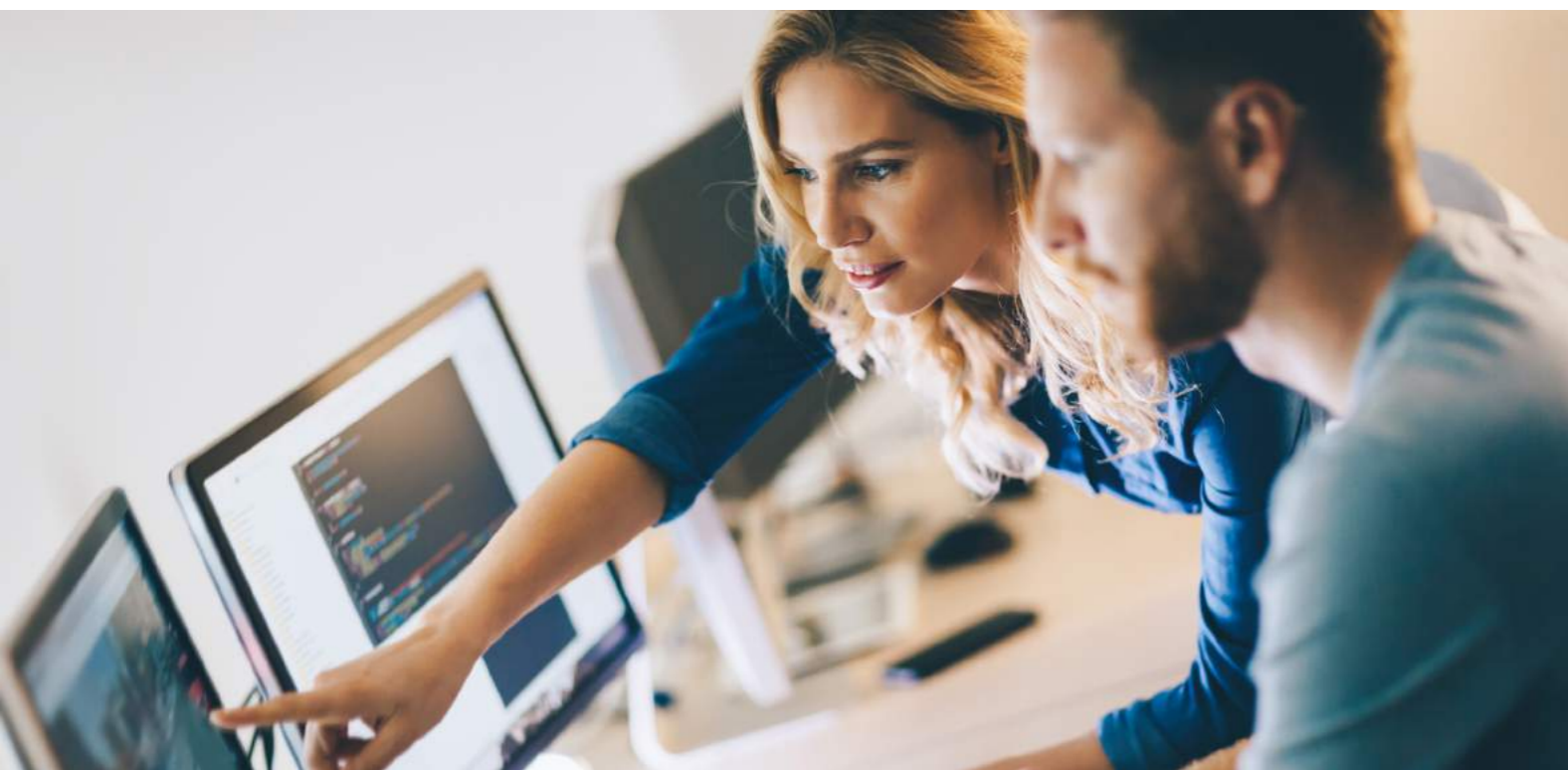
⁷⁰ Observation (CEACR) - adopted 2018, published 108th ILC session (2019) - Right to Organise and Collective Bargaining Convention, 1949 (No. 98) - Greece (Ratification: 1962). See: https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3962772

Recommendation 1

- Recommendation 1**
- 91.** No person should be prejudiced in employment⁷¹ by reason of involvement in trade union activities. Cases of anti-union discrimination should be dealt with promptly and effectively by the competent institutions.
- 92.** The Government is responsible for preventing all acts of anti-union discrimination and it must ensure that complaints of anti-union discrimination are examined in the framework of national procedures which should be prompt, impartial and considered as such by the parties concerned.⁷²
- 93.** The Office understands that in Greek law (under art. 14 of Law 1264/1982) the reversal of burden of proof may cover trade union representatives at enterprise level, but this is dependent on the size of the undertaking. The Office recommends dialogue with the social partners as to how union representatives at enterprise level who are currently not covered under the law can be better protected against acts of anti-union discrimination.
- 94.** In line with the guidance provided by Recommendation No. 143 that “provision for laying upon the employer, in the case of any alleged discriminatory dismissal or unfavourable change in the conditions of employment of a workers’ representative, the burden of proving that such action was justified;”, implies that consideration could be given to extending reversal of burden of proof in the context of anti-union discrimination (so as to protect all stages of the employment relationship including recruitment, non-renewal and dismissal) and introducing summary proceedings.

⁷¹ The term employment encompasses recruitment and dismissal in this context.

⁷² COMPILATION (ILO), 2018, para. 1138.



Access to workplaces

- 95.** The Workers’ Representatives Recommendation, 1971 (No. 143), which complements the Convention, states in paragraph 12: “Workers’ representatives in the undertaking should be granted access to all workplaces in the undertaking, where such access is necessary to enable them to carry out their representation functions.”

Access to workplaces

ILO Recommendation No. 143 explicitly sets forward in paragraph 17 that a trade union representative may be a person not employed in the undertaking, but if their trade union has members employed therein, they should be granted access to the undertaking.⁷³

The Office further notes the decisions of the ILO Committee on Freedom of Association (CFA). The CFA clarified that “Governments should guarantee the access of trade union representatives to workplaces, with due respect for the rights of property and management, so that trade unions can communicate with workers in order to apprise them of the potential advantages of unionization.”⁷⁴

- 96.** The Office understands that the Greek law does not provide for a general right for workers’ representatives to enter the undertaking.
- 97.** The Office notes the conclusions of the comparative report, namely that the right of trade union officials to enter the workplace to engage in recruitment activities is of great practical importance in undertakings which have no or few unionized members. Good practices can be found in Spain and Germany, where there is a right either of a statutory nature (Spain) or recognized by a judge to visit the workplace to the benefit of trade union officials (Germany). In both cases, it is essential that the employer is duly notified and that the visit does not abnormally disrupt the efficient operation of the undertaking concerned. The Italian provision presupposes that at least one worker is unionized.

Recommendation 2

- 98.** The Office recommends considering to grant access to all workplaces in the undertaking to all workers’ representatives, including workers’ representatives who are not employed in the undertaking, where such access is necessary to enable them to carry out their representation functions and/or to allow trade unions to make workers aware of the potential advantages of unionization with due respect for the rights of property and management. This right should be exercised in such a way as not disrupt the efficient operation of the undertaking concerned.

Recommendation 2

If necessary, workers organizations and employers could reach agreements so that access to workplaces, during and outside working hours, can be granted to workers’ organizations without impairing the functioning of the establishment or service.⁷⁵

⁷³ COMPILATION (ILO), 2018, paras. 1587, 1593, 1594, 1596 and International Labour Conference, 81session 1994, CEACR, Freedom of Association and Collective Bargaining, ILO, 1994, nr. 128.

⁷⁴ COMPILATION (ILO), 2018, para. 1590.

⁷⁵ COMPILATION (ILO), 2018, para. 1599.

Leave of absence - costs

Leave of absence - costs

99. The Office recalls the guidance provided in Article 10 of the Workers' Representatives Recommendation, 1971 (No. 143) which states:

"(1) Workers' representatives in the undertaking should be afforded the necessary time off from work, without loss of pay or social and fringe benefits, for carrying out their representation functions in the undertaking [...]."

100. The Greek system facilitates the election of trade union representatives from the level of the undertaking. One challenge appears to be that there is no relation between the extent of the leave and the size of the undertaking where the elected representative is working. Hence, the election of such a worker as workers' representative is a "risk" which will be borne by the employer at the enterprise level, despite the fact that the workers' representative might be involved in activities at a level other than the enterprise level (sectoral, national and even European). The employer has no means to mitigate this risk.
101. The Office noted during the inception mission in January 2020 that some of the employers' organizations are not satisfied that employers indirectly finance the functioning of the trade unions for issues not directly relevant for the management of the human resources or the industrial relations at the enterprise level. However, trade union activities carried out at levels other than the enterprise level might be instrumental for the work the representative carries out within the enterprise, and for sound industrial relations within the workplace.

Recommendation 3

- Recommendation 3 102. The Greek system facilitates the election of trade union representatives from the level of the firm or undertaking to national, sectoral or peak council office. Under certain circumstances, the elected union representative is entitled to take paid leave from the employer to perform union duties. However, there is no relation between the extent of the leave taken and the size of the firm or undertaking where the elected representative is employed. Hence, the election of such a worker as workers' representative is a "risk" which will be borne by the employer at the enterprise level, despite the fact that the workers' representative might be involved in activities at a level other than the enterprise level (e.g. sectoral, national or European). The Office understands that the employer currently has no means to mitigate the consequence of this situation.
103. The Office recommends that the Government should engage in dialogue with social partners to find a solution to mitigate the risks.

Association of persons

104. One of the main issues under discussion in the area of labour relations in Greece relates to the status of the association of persons.

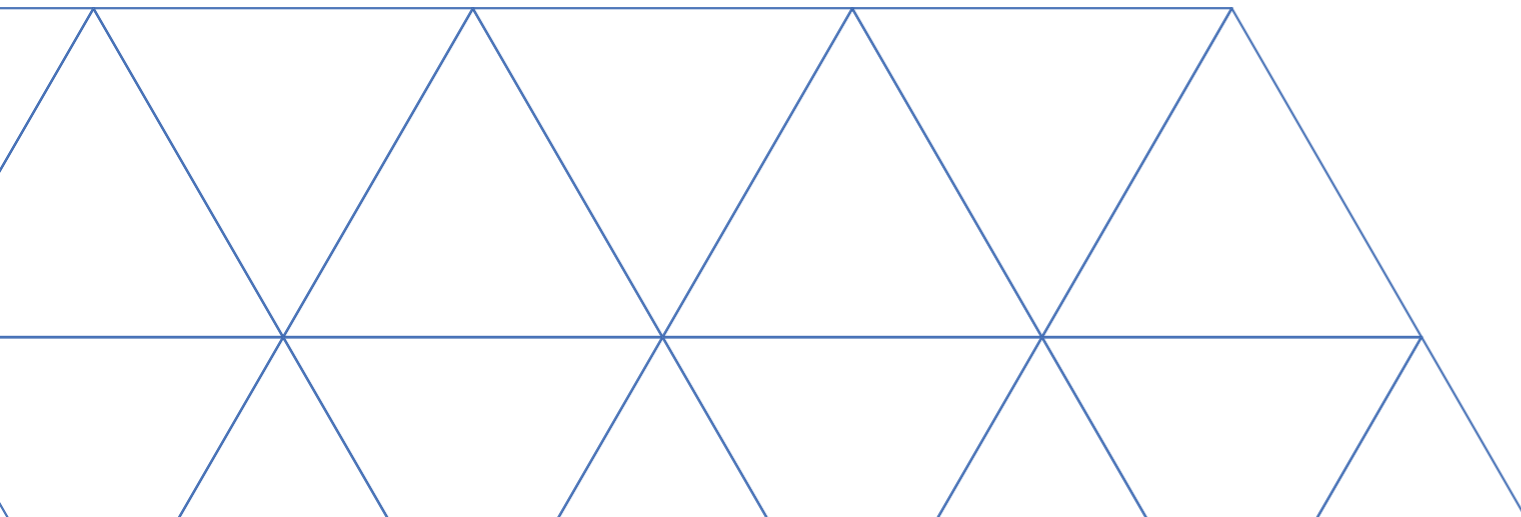
Association of persons

105. The Office recalls the decision by the Committee of Freedom of Association in 2012 on this topic:

"The Committee considers that collective bargaining with representatives of non-unionized workers should only be possible where there are no trade unions at the respective level. In this regard, the Committee recalls that the Collective Agreements Recommendation, 1951 (No. 91), emphasizes the role of workers' organizations as one of the parties in collective bargaining; it refers to representatives of unorganized workers only when no organization exists and the Workers' Representatives Convention, 1971 (No. 135), and the Collective Bargaining Convention, 1981 (No. 154), also contain explicit provisions guaranteeing that, where there exist in the same undertaking both trade union representatives and elected representatives, appropriate measures are to be taken to ensure that the existence of elected representatives is not used to undermine the position of the trade unions concerned. [See Digest, op. cit., paras 944 and 946.] The Committee takes due note of the assurances provided by the Government that members of associations of persons will be similarly protected against acts of anti-union discrimination but further observes that the Government does not contend that such associations can be considered to be trade unions with full functions and guarantees of independence. In these circumstances, the Committee is concerned that the granting of collective bargaining rights to such associations may seriously undermine the position of trade unions as the representative voice of the workers in the collective bargaining process. The Committee considers this all the more so given that the recognition of such associations comes within a context of a radical overhauling of the labour relations system as it was known in the country. The Committee expects that the question of the roles and responsibilities of association of persons will be the subject of a full and comprehensive discussion with the social partners, within the framework of an overall review of the labour relations system, with a view to ensuring that they do not undermine the position of trade unions in relation to collective bargaining."

106. The Office recalls that Article 3 of the Collective Bargaining Convention, 1981 (No. 154) states:

1. *"Where national law or practice recognizes the existence of workers' representatives as defined in Article 3, subparagraph (b), of the Workers' Representatives Convention, 1971, national law or practice may determine the extent to which the term **collective bargaining** shall also extend, for the purpose of this Convention, to negotiations with these representatives.*
2. *Where, in pursuance of paragraph 1 of this Article, the term **collective bargaining** also includes negotiations with the workers' representatives referred to in that paragraph, appropriate measures shall be taken, wherever necessary, to ensure that the existence of these representatives is not used to undermine the position of the workers' organisations concerned."*



Association of persons

107. The Office recalls that Paragraph 4 of the Workers' Representatives Recommendation, 1971 (No. 143) states the following:

*"Where there exist in the same undertaking both trade union representatives and elected representatives, appropriate measures should be taken, wherever necessary, to ensure that the existence of elected representatives **is not used to undermine the position of the trade unions concerned or their representatives** and to encourage co-operation on all relevant matters between the elected representatives and the trade unions concerned and their representatives."* [emphasis added]

The Office further recalls Paragraph 2 Collective Agreements Recommendation, 1951 (No. 91) clarifies the role recognised by international labour standards to representatives designated or elected by trade unions as opposed to workers' representatives, especially for what concerns their role in the process of collective bargaining stating:

i) *"the term collective agreements means all agreements in writing regarding working conditions and terms of employment concluded between an employer, a group of employers or one or more employers' organisations, on the one hand, and one or more representative workers' organisations, **or, in the absence of such organisations**, the representatives of the workers duly elected and authorised by them in accordance with national laws and regulations, on the other."* [emphasis added]

108. The Office notes the following statement by the Committee of Experts:

*"Indeed, the Committee considers that direct bargaining between the enterprise and its employees with a view to avoiding sufficiently representative organizations, where they exist, may undermine the principle of the promotion of collective bargaining set out in the Convention."*⁷⁶

109. The Office understands that Law 4024/2011 allowed so-called "associations of persons" to conclude collective agreements in companies without a union.⁷⁷ Under Law 4024/2011 these "associations of persons" can sign firm level collective agreements, provided that 60% of the workforce belong to the "association of persons". The representativeness of the "association of persons" in the negotiations for the conclusion of such agreements was seen as particularly problematic, especially in the context of SMEs that make up the majority of Greek companies.⁷⁸ Ever since their introduction, "associations of persons" have substantially undermined the role of trade unions at enterprise level, in particular, during the years of the economic crisis, and have become signatory parties to the majority of firm-level agreements from 2012 onwards, most of which resulted in wage cuts, at least in 2012.⁷⁹

⁷⁶ ILO, 2012 - General Survey. *Giving globalization a human face*. International Labour Conference, 101st session, 2012, para. 239.

⁷⁷ See national background report prepared by Prof. Kostas Papadimitriou "Trade Union facilities in Greece" (unpublished).

⁷⁸ ILO, *Evaluating the effects of the structural labour market reforms on collective bargaining in Greece*, 2016, p. 14

⁷⁹ Ioannou, I and Papadimitriou, C. *Collective negotiations in Greece during 2011=2012: trends, changes and prospects* (in Greek), Athens, Organization for Mediation and Arbitration, 2013.

Association of persons

110. The Office understands that associations of persons (one per establishment, undertaking, public service, public body corporate or local self-government agency) are founded by at least ten workers by means of articles of association, which are then submitted to the clerk of the competent magistrate's court and communicated to the employer, on condition that a) the number of workers does not exceed 40; and b) there is no primary trade union in which at least half of the workers are members. If, after the establishment (where appropriate) of any such an association of persons, one of the above conditions ceases to be satisfied, the association shall be automatically dissolved. The articles shall specify the purpose of the association, designate two persons to represent it and provide for its duration, which shall not exceed six months.

111. The ILO High Level Mission report (2011)⁸⁰ stated that *"The High Level Mission understands that associations of persons are not trade unions, nor are they regulated by any of the guarantees necessary for their independence. The High Level Mission is deeply concerned that the conclusion of 'collective agreements' in such conditions would have a detrimental impact on collective bargaining and the capacity of the trade union movement to respond to the concerns of its members at all levels, on existing employers' organizations, and for that matter on any firm basis on which social dialogue may take place in the country in the future."*

⁸⁰ ILO (International Labour Office), *Report on the High Level Mission to Greece, Athens 19 -23 September 2011, Geneva: International Labour Office, p. 59.*



- 112.** In the observations of the CEACR concerning the application of Right to Organise and Collective Bargaining Convention, 1949 (No. 98) in Greece, the CEACR noted the following in 2018:⁸¹

“Enterprise-level collective agreements and association of persons. The Committee recalls its previous comments concerning Act No. 4024/2011 which provided that, where there is no trade union in the company, an association of persons is competent to conclude a firm-level collective agreement. The Committee had previously expressed concern that, given the prevalence of small enterprises in the Greek labour market, the facilitation of association of persons, combined with the abolition of the favourability principle set out first in Act No. 3845/2010 and given concrete application in Act No. 4024/2011, would have a severely detrimental impact upon the foundation of collective bargaining in the country. The Committee notes the Government’s indication that the favourability principle has been restored and observes the recent statistics provided according to which, in 2017, 155 firm-level collective agreements were signed with trade unions and 91 association agreements were signed with associations of persons. Twenty-six sectoral agreements and 15 occupational agreements are also in force. The Committee further notes, however, the continuing concerns of the GSEE that associations of persons still remain in detriment to democratically elected and functioning sectoral trade unions. **Recalling the importance of promoting collective bargaining with workers’ organizations and thus improving collective bargaining coverage, the Committee requests the Government to reply in detail and to indicate the steps taken to promote collective bargaining with trade unions at all levels, including by considering, in consultation with the social partners, the possibility of trade union sections being formed in small enterprises.”**

- 113.** The Office understands that changes introduced in 2019 (Law 4635/2019, Article 53) made further amendments to the legal framework in respect of the hierarchy and extension of collective agreements. These include, among others, granting priority to company-level agreements in the case of companies in difficulty, even when the terms of these agreements are less favourable than those of higher-level agreements. It is to be noted that in such cases associations of persons have the capacity to conclude such agreements.
- 114.** In this context the Office notes that the Committee had previously expressed concern that, given the prevalence of small enterprises on the Greek labour market, the facilitation of association of persons, combined with the abolition of the favourability principle, set out first in Law 3845/2010 and given concrete application in Law 4024/2011, would have a severely detrimental impact upon the foundation of collective bargaining in the country. The Committee noted the Government’s indication that the favourability principle has been restored. The Office further notes that enterprises in economic difficulties can opt out of the favourability principle.

⁸¹ Observation (CEACR) - adopted 2018, published 108th ILC session (2019) – Right to Organise and Collective Bargaining Convention, 1949 (No. 98) - Greece (Ratification: 1962). See: https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3962772

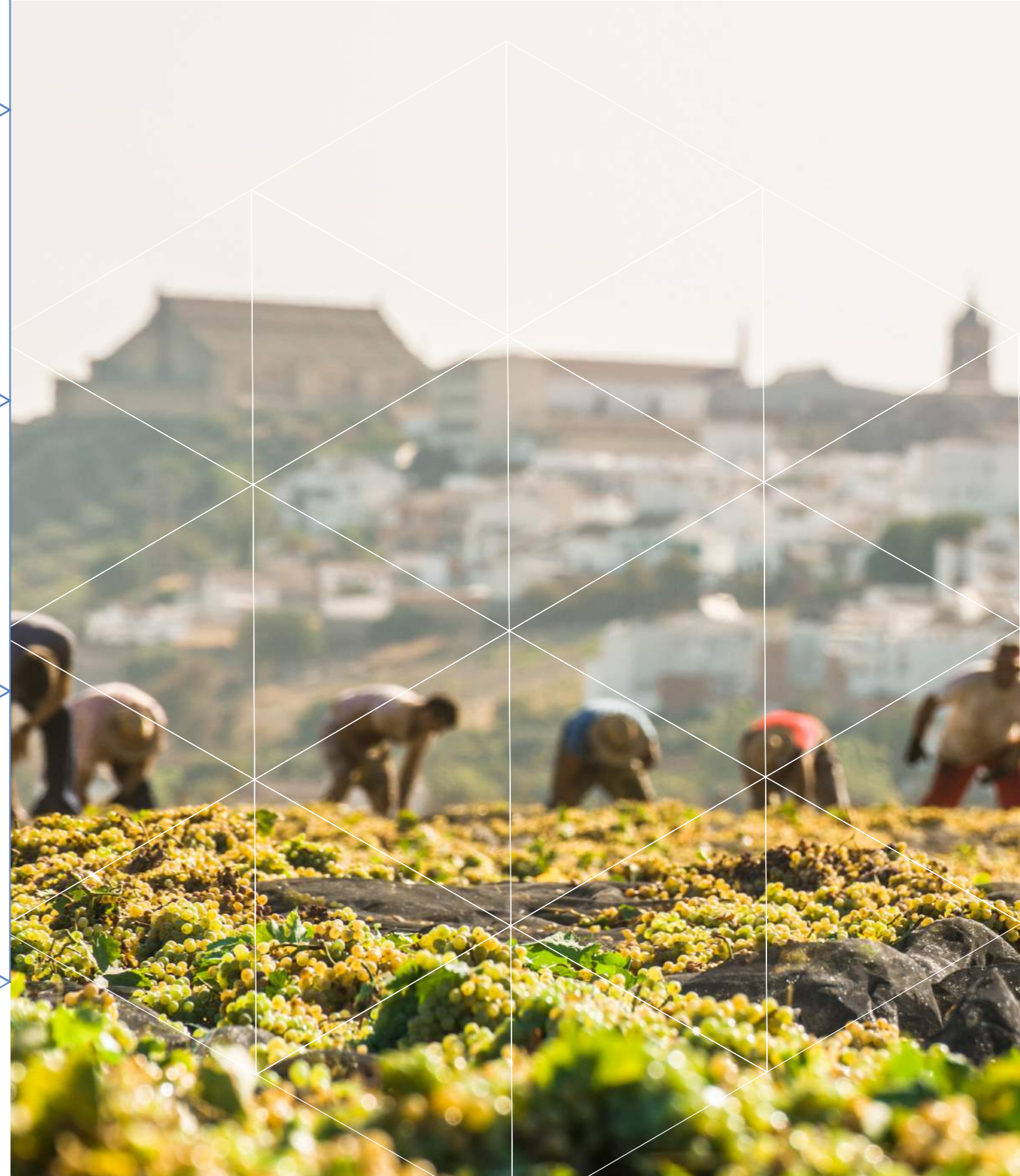
- 115.** The Office notes that one way to mitigate the detrimental impact upon the foundation of collective bargaining might be through the extension of collective agreements. The Office recalls the observation by the CEACR which “notes the information provided by the SEV that the revival of the ministerial right to extend the coverage of sectoral agreements after the end of the completion of the third economic adjustment programme for Greece should bear in mind the following basic conditions: (i) a reliable methodology for ensuring the collective agreement covers at least 51 per cent of the employees; (ii) the parties to the agreement agree to the extension; and (iii) compulsory arbitration awards should be excluded from the extension mechanism. The Committee notes the Government’s indication that it has issued Circular No. 3291/2175/13.06.2018 which defines the procedure to be followed to identify whether 51 per cent of the sector’s workers are covered by the collective agreement before deciding whether it may be declared universally applicable under article 11.2 of Law 1876. The Government indicates that this approach has been the subject of intensive consultations and had been accepted by all social partners. Referring to a subsequent exchange of letters with the SEV, the Government indicates that the discretionary authority to declare a labour collective agreement as universally applicable is conferred solely upon the Minister of Labour.”
- 116.** The Committee recalls in this regard that Paragraph 5.2 of the Collective Agreements Recommendation, 1951 (No. 91), provides that “National laws or regulations may make the extension of a collective agreement subject to the following, among other, conditions: (a) that the collective agreement already covers a number of the employers and workers concerned which is, in the opinion of the competent authority, sufficiently representative; (b) that, as a general rule, the request for extension of the agreement shall be made by one or more organizations of workers or employers who are parties to the agreement; and (c) that, prior to the extension of the agreement, the employers and workers to whom the agreement would be made applicable by its extension should be given an opportunity to submit their observations.”
- 117.** The Office also takes note of the results of the comparative study which clarifies that independence needs to be ensured to the benefit of both employers’ as well as workers’ organizations. Interference can stem from both authorities as well as workers’ or employers’ organizations and their members. Due to a certain imbalance of power between employers and workers and their respective organizations, it will be easier for an individual employer to interfere with the functioning of a trade union than it will be for a trade union, let alone their members, to interfere with the functioning of an employers’ organization. Thus, all the examples of interference highlighted in Article 2 of ILO Convention No. 98 relate to interference affecting workers’ organizations.⁸²

⁸² Dorsemont, F, *Facilities for trade union representatives and trade union members to exercise their rights.*

118. The Office further notes the findings of an ILO working paper on Evaluating the effects of the structural labour market reforms on collective bargaining in Greece that “research now repeatedly demonstrates that vertical coordination, or ‘articulation’, between levels [of collective bargaining] is critical for flexibility, sustainability and performance”.⁸³

Recommendation 4

- Recommendation 4**
- 119.** The Office recalls the observation by the CEACR namely that the Government should take steps to promote collective bargaining with trade unions at all levels, including by considering, in consultation with the social partners, the possibility of trade union sections being formed in small enterprises. This could mean that the higher-level organization could set up a section in the enterprise via trade union members within the enterprise. Allowing higher-level trade unions to set up sections in an enterprise would enable collective bargaining by trade unions in small enterprises.
- 120.** In line with guidance provided by C135 and C154, where there exist in the same undertaking both trade union representatives and **elected** representatives, appropriate measures should be taken, wherever necessary to ensure that the existence of such elected representatives is not used to undermine the position of the trade unions concerned, especially as far as the process of collective bargaining is concerned.
- 121.** The Office encourages the Government to make collective agreements (including those signed by associations of persons) publicly accessible to enable an assessment of the extent to which the firm level agreements signed with associations of persons continue to be less favourable than the provisions at higher level since the revision of the law in 2018 and 2019, respectively.



⁸³ ILO, *Evaluating the effects of the structural labour market reforms on collective bargaining in Greece*, 2016.



Annex I Ratifications of ILO Conventions by Greece

71 Conventions and 1 Protocol

ANNEX I

- Fundamental Conventions: **8 of 8**
- Governance Conventions (Priority): **3 of 4**
- Technical Conventions: **60 of 178**
- Out of **71** Conventions and **1** Protocol ratified by Greece, of which **51** are in force, **17** Conventions have been denounced; **3** instruments abrogated; **none** have been ratified in the past 12 months.

Fundamental:

Convention	Date	Status
C029 - Forced Labour Convention, 1930 (No. 29)	13 Jun 1952	In Force
C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)	30 Mar 1962	In Force
C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98)	30 Mar 1962	In Force
C100 - Equal Remuneration Convention, 1951 (No. 100)	06 Jun 1952	In Force
C105 - Abolition of Forced Labour Convention, 1957 (No. 105)	30 Mar 1962	In Force
C111 - Discrimination (Employment and Occupation) Convention, 1958 (No. 111)	7 May 1984	In Force
C138 - Minimum Age Convention, 1973 (No. 138) Minimum age specified: 15 years	14 Mar 1986	In Force
C182 - Worst Forms of Child Labour Convention, 1999 (No. 182)	6 Nov 2001	In Force

Governance (Priority)

Convention	Date	Status
C081 - Labour Inspection Convention, 1947 (No. 81)	16 Jun 1955	In Force
C122 - Employment Policy Convention, 1964 (No. 122)	7 May 1984	In Force
C144 - Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)	28 Aug 1981	In Force

Technical

Convention	Date	Status	
C001 - Hours of Work (Industry) Convention, 1919 (No. 1)	19 Nov 1920	In Force	
C002 - Unemployment Convention, 1919 (No. 2)	19 Nov 1920	In Force	
C003 - Maternity Protection Convention, 1919 (No. 3)	19 Nov 1920	In Force	
C004 - Night Work (Women) Convention, 1919 (No. 4)	19 Nov 1920	Not in force	Abrogated Convention - By decision of the ILC at its 106th Session (2017)
C005 - Minimum Age (Industry) Convention, 1919 (No. 5)	19 Nov 1920	Not in force	Automatic Denunciation on 14 Mar 1987 by convention C138
C006 - Night Work of Young Persons (Industry) Convention, 1919 (No. 6)	19 Nov 1920	In Force	
C007 - Minimum Age (Sea) Convention, 1920 (No. 7)	16 Dec 1925	Not in force	Automatic Denunciation on 14 Mar 1987 by convention C138
C008 - Unemployment Indemnity (Shipwreck) Convention, 1920 (No. 8)	16 Dec 1925	Not in force	Automatic Denunciation on 04 Jan 2014 by convention MLC, 2006
C009 - Placing of Seamen Convention, 1920 (No. 9)	16 Dec 1925	Not in force	Automatic Denunciation on 04 Jan 2014 by convention MLC, 2006
C011 - Right of Association (Agriculture) Convention, 1921 (No. 11)	13 Jun 1952	In Force	
C013 - White Lead (Painting) Convention, 1921 (No. 13)	22 Dec 1926	In Force	
C014 - Weekly Rest (Industry) Convention, 1921 (No. 14)	11 May 1929	In Force	
C015 - Minimum Age (Trimmers and Stokers) Convention, 1921 (No. 15)	14 Jun 1930	Not in force	Abrogated Convention - By decision of the ILC at its 106th Session (2017)
C016 - Medical Examination of Young Persons (Sea) Convention, 1921 (No. 16)	28 Jun 1930	Not in force	Automatic Denunciation on 04 Jan 2014 by convention MLC, 2006
C017 - Workmen's Compensation (Accidents) Convention, 1925 (No. 17)	13 Jun 1952	In Force	
C019 - Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)	30 May 1936	In Force	

Technical

Convention	Date	Status	
C023 - Repatriation of Seamen Convention, 1926 (No. 23)	06 May 1981	Not in force	Automatic Denunciation on 04 Jan 2014 by convention MLC, 2006
C027 - Marking of Weight (Packages Transported by Vessels) Convention, 1929 (No. 27)	30 May 1936	In Force	
C041 - Night Work (Women) Convention (Revised), 1934 (No. 41)	30 May 1936	Not in force	Abrogated Convention - By decision of the International Labour Conference at its 106th Session (2017)
C042 - Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934 (No. 42)	13 Jun 1952	In Force	
C045 - Underground Work (Women) Convention, 1935 (No. 45)	30 May 1936	In Force	
C052 - Holidays with Pay Convention, 1936 (No. 52)	13 Jun 1952	In Force	
C055 - Shipowners' Liability (Sick and Injured Seamen) Convention, 1936 (No. 55)	19 Jun 1968	Not in force	Automatic Denunciation on 04 Jan 2014 by convention MLC, 2006
C058 - Minimum Age (Sea) Convention (Revised), 1936 (No. 58)	09 Oct 1963	Not in force	Automatic Denunciation on 04 Jan 2014 by convention MLC, 2006
C062 - Safety Provisions (Building) Convention, 1937 (No. 62)	29 Aug 1984	In Force	
C068 - Food and Catering (Ships' Crews) Convention, 1946 (No. 68)	28 Aug 1981	Not in force	Automatic Denunciation on 04 Jan 2014 by convention MLC, 2006
C069 - Certification of Ships' Cooks Convention, 1946 (No. 69)	09 Oct 1963	Not in force	Automatic Denunciation on 04 Jan 2014 by convention MLC, 2006
C071 - Seafarers' Pensions Convention, 1946 (No. 71)	02 Dec 1986	In Force	
C073 - Medical Examination (Seafarers) Convention, 1946 (No. 73)	06 May 1981	Not in force	Automatic Denunciation on 04 Jan 2014 by convention MLC, 2006
C077 - Medical Examination of Young Persons (Industry) Convention, 1946 (No. 77)	28 Aug 1981	In Force	
C078 - Medical Examination of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 78)	28 Aug 1981	In Force	
C080 - Final Articles Revision Convention, 1946 (No. 80)	13 Jun 1952	In Force	

Technical

Convention	Date	Status	
C088 - Employment Service Convention, 1948 (No. 88)	16 Jun 1955	In Force	
C089 - Night Work (Women) Convention (Revised), 1948 (No. 89)	27 Apr 1959	Not in force	Denounced on 25 Feb 1992
C090 - Night Work of Young Persons (Industry) Convention (Revised), 1948 (No. 90)	30 Mar 1962	In Force	
C092 - Accommodation of Crews Convention (Revised), 1949 (No. 92)	02 Dec 1986	Not in force	Automatic Denunciation on 04 Jan 2014 by convention MLC, 2006
C095 - Protection of Wages Convention, 1949 (No. 95)	16 Jun 1955	In Force	
C102 - Social Security (Minimum Standards) Convention, 1952 (No. 102)Has accepted Parts II to VI and VIII to X	16 Jun 1955	In Force	
C103 - Maternity Protection Convention (Revised), 1952 (No. 103)	18 Feb 1983	In Force	
C106 - Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106)	28 Aug 1981	In Force	
C108 - Seafarers' Identity Documents Convention, 1958 (No. 108)	09 Oct 1963	In Force	
C115 - Radiation Protection Convention, 1960 (No. 115)	04 Jun 1982	In Force	
C124 - Medical Examination of Young Persons (Underground Work) Convention, 1965 (No. 124)	28 Aug 1981	In Force	
C126 - Accommodation of Crews (Fishermen) Convention, 1966 (No. 126)	19 Jun 1990	In Force	
C133 - Accommodation of Crews (Supplementary Provisions) Convention, 1970 (No. 133)	24 Sep 1986	Not in force	Automatic Denunciation on 04 Jan 2014 by convention MLC, 2006
C134 - Prevention of Accidents (Seafarers) Convention, 1970 (No. 134)	08 Jun 1977	Not in force	Automatic Denunciation on 04 Jan 2014 by convention MLC, 2006
C135 - Workers' Representatives Convention, 1971 (No. 135)	27 Jun 1988	In Force	

Technical

Convention	Date	Status	
C136 - Benzene Convention, 1971 (No. 136)	24 Jan 1977	In Force	
C141 - Rural Workers' Organisations Convention, 1975 (No. 141)	17 Oct 1989	In Force	
C142 - Human Resources Development Convention, 1975 (No. 142)	17 Oct 1989	In Force	
C147 - Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147)P147 - Protocol of 1996 to the Merchant Shipping (Minimum Standards) Convention, 1976 ratified on 14 May 2002 (Not in force) Has ratified the Protocol of 1996	18 Sep 1979	Not in force	Automatic Denunciation on 04 Jan 2014 by convention MLC, 2006
C149 - Nursing Personnel Convention, 1977 (No. 149)	17 Mar 1987	In Force	
C150 - Labour Administration Convention, 1978 (No. 150)	31 Jul 1985	In Force	
C151 - Labour Relations (Public Service) Convention, 1978 (No. 151)	29 Jul 1996	In Force	
C154 - Collective Bargaining Convention, 1981 (No. 154)	17 Sep 1996	In Force	
C156 - Workers with Family Responsibilities Convention, 1981 (No. 156)	10 Jun 1988	In Force	
C159 - Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159)	31 Jul 1985	In Force	
C160 - Labour Statistics Convention, 1985 (No. 160)Acceptance of all the Articles of Part II has been specified pursuant to Article 16, paragraph 2, of the Convention.	17 Mar 1993	In Force	
C180 - Seafarers' Hours of Work and the Manning of Ships Convention, 1996 (No. 180)	14 May 2002	Not in force	Automatic Denunciation on 04 Jan 2014 by convention MLC, 2006
MLC, 2006 - Maritime Labour Convention, 2006 (MLC, 2006)In accordance with Standard A4.5 (2) and (10), the Government has specified the following 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.	04 Jan 2013	In Force	

Technical

Convention	Date	Status	
Amendments of 2014 to the MLC, 2006	18-Jan-2017	In Force	
Amendments of 2016 to the MLC, 2006	08-Jan-2019	In Force	
Amendments of 2018 to the MLC, 2006	26-Dec-2020	Not in force	The amendments of 2018 to the MLC, 2006 have been accepted and will enter into force for Greece on 26 Dec 2020



ANNEX II

Recent observations by the Committee of Experts on the Application of Conventions and Recommendations on individual and collective labour dispute settlement systems and labour relations in Greece

Observation (CEACR) - adopted 2018, published 108th ILC session (2019) Right to Organise and Collective Bargaining Convention, 1949 (No. 98) - Greece (Ratification: 1962)

The Committee takes note of the detailed observations provided by the International Organisation of Employers (IOE) and the Hellenic Federation of Enterprises and Industries (SEV) in a communication received on 31 August 2018. **The Committee further notes the detailed observations provided by the Greek General Confederation of Labour (GSEE) received on 1 November 2018 and requests the Government to reply in detail.**

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 107th Session, May-June 2018)

The Committee notes the conclusions of the Committee on the Application of Standards (hereafter "Conference Committee") at the 107th International Labour Conference (June 2018). It notes that the Conference Committee had expressed concern regarding the Government's submission related to the compulsory arbitration system and the decision of the Council of State concluding that the provision in Act No. 4046, which provided for the suppression of unilateral recourse to compulsory arbitration, was unconstitutional. The Conference Committee also expressed concern regarding the Government's failure to provide a report to the Committee of Experts in time for its previous session in November 2017. Taking into account the Government's submissions and the discussion that followed, the Conference Committee urged the Government to: (i) ensure that unilateral recourse to compulsory arbitration as a way to avoid free and voluntary collective bargaining is employed only in very limited circumstances; (ii) ensure that public authorities refrain from acts of interference, which restrict the right to free and voluntary collective bargaining, or impede its lawful exercise; (iii) provide information on the number of collective agreements signed, the sectors concerned and the number of workers covered by these collective agreements; (iv) provide information and statistics related to complaints of anti-union discrimination and any remedial action taken; (v) avail itself of ILO technical assistance to ensure the implementation of these measures; and (vi) report to the Committee of Experts on the implementation of these recommendations before its session in November 2018.

Article 4 of the Convention. Promotion of collective bargaining.

The Committee recalls that its previous comments concerned the Council of State decision finding that the provision in Act No. 4046 of 14 February 2012, which provided for the suppression of unilateral recourse to compulsory arbitration, was unconstitutional. The Committee trusted that the measures taken by the Government to respond to this decision would fully take into account its previous considerations that as a general rule, legislative provisions which permit either party unilaterally to request compulsory arbitration for the settlement of a dispute does not promote voluntary collective bargaining and is thus contrary to the Convention. The Committee notes the concerns expressed by the SEV that the Government has ignored its proposals to consider amendments that would significantly reduce the existing distortion and be more in line with international labour standards as an interim measure until an opportunity to settle the matter at the level of the Constitution or its interpretation could be found.

The Committee notes that the Government refers to recent amendments made to Law 1876/1990 brought about through Law 4549/2018 which favours autonomous resolution of disputes during mediation and enables a unilateral request for arbitration to be taken only by the party that has accepted the mediation proposal where the other party has rejected it.

The Government affirms that the fundamental principle of the Greek mediation and arbitration system is that the social partners themselves may specify conditions for having recourse to it and the provisions of the law on mediation and arbitration only apply when there has been no such agreement. The Government emphasizes that mediation has only an auxiliary function and the vast majority of collective regulations are resolved by mutual consent of the parties. In order to strengthen the principle of good faith, under Law 4549/2018, the right to unilateral recourse to arbitration is granted in only two cases: (i) on the initiative of any party where the other has refused mediation; and (ii) on the initiative of any party that accepted the mediation proposal which was rejected by the other party. Previously it had not been necessary to accept the mediation proposal in order to be able to have unilateral recourse to arbitration. According to the Government, unilateral recourse to arbitration is thus only granted as a last resort only to the parties that have exhausted all efforts of good-faith behaviour and demonstrated willingness to consent. The Government adds that Law 4549/2018 explicitly introduces the evolution of purchasing power of wages among the considerations for a mediation proposal or arbitral award in order to respond to living costs that have frequently adversely affected the purchasing power of workers.

The Government states that the above changes were made after intensive social dialogue with the social partners on the basis of an extensive study on the evolution of the arbitration system since the entry into force of Law 1876/1990. The Government adds that these changes are in compliance with the decision of the Greek Supreme Court which had ruled that the institution of unilateral recourse to arbitration as an auxiliary mechanism for the resolution of collective disputes is guaranteed and prescribed under the Greek Constitution, while the scope of this right has been restricted, stressing the importance of good faith behaviour. To demonstrate the infrequent use of the arbitration mechanism, the Government provides statistics from the period 2010–17 in which 3,506 collective regulations were signed with 96.38 per cent being labour collective agreements and 3.62 per cent being arbitral awards.

The Committee recalls that compulsory arbitration in the case that the parties have not reached agreement is generally contrary to the principles of collective bargaining. In the Committee's opinion, compulsory arbitration is only acceptable in certain specific circumstances, namely: (i) in essential services in the strict sense of the term, that is those the interruption of which would endanger the life, personal safety or health of the whole or part of the population; (ii) in the case of disputes in the public service involving public servants engaged in the administration of the State; (iii) when, after protracted and fruitless negotiations, it becomes obvious that the deadlock will not be broken without some initiative by the authorities; or (iv) in the event of an acute crisis (see 2012 General Survey on the fundamental Conventions, paragraph 247). The Committee takes due note of the efforts made by the Government to further restrict recourse to compulsory arbitration within the framework of Law No. 4549/2018, taking into account the constitutional rules by which it is bound.

The Committee nevertheless trusts that the Government will continue to engage with the social partners, both during its review of the law and within the context of the constitutional reform, to bring this mechanism into full compliance with the obligation to promote free and voluntary collective bargaining by eliminating, except in the cases described above, the possibility of a single party to have recourse to compulsory arbitration if the other party rejects the mediation proposal. It requests the Government to provide detailed information in this regard.

As regards extension of collective agreements, the Committee notes the information provided by the SEV that the revival of the ministerial right to extend the coverage of sectoral agreements after the end of the completion of the third economic adjustment programme for Greece should bear in mind the following basic conditions: (i) a reliable methodology for ensuring the collective agreement covers at least 51 per cent of the employees; (ii) the parties to the agreement agree to the extension; and (iii) compulsory arbitration awards should be excluded from the extension mechanism.

The Committee notes the Government's indication that it has issued Circular No. 3291/2175/13.06.2018 which defines the procedure to be followed to identify whether 51 per cent of the sector's workers are covered by the collective agreement before deciding whether it may be declared universally applicable under article 11.2 of Law 1876. The Government indicates that this approach has been the subject of intensive consultations and had been accepted by all social partners. Referring to a subsequent exchange of letters with the SEV, the Government indicates that the discretionary authority to declare a labour collective agreement as universally applicable is conferred solely upon the Minister of Labour.

The Committee recalls in this regard that Paragraph 5.2 of the Collective Agreements Recommendation, 1951 (No. 91), provides that: National laws or regulations may make the extension of a collective agreement subject to the following, among other, conditions: (a) that the collective agreement already covers a number of the employers and workers concerned which is, in the opinion of the competent authority, sufficiently representative; (b) that, as a general rule, the request for extension of the agreement shall be made by one or more organizations of workers or employers who are parties to the agreement; and (c) that, prior to the extension of the agreement, the employers and workers to whom the agreement would be made applicable by its extension should be given an opportunity to submit their observations.

Enterprise-level collective agreements and association of persons.

The Committee recalls its previous comments concerning Act No. 4024/2011 which provided that, where there is no trade union in the company, an association of persons is competent to conclude a firm-level collective agreement. The Committee had previously expressed concern that, given the prevalence of small enterprises in the Greek labour market, the facilitation of association of persons, combined with the abolition of the favourability principle set out first in Act No. 3845/2010 and given concrete application in Act No. 4024/2011, would have a severely detrimental impact upon the foundation of collective bargaining in the country. The Committee notes the Government's indication that the favourability principle has been restored and observes the recent statistics provided according to which, in 2017, 155 firm-level collective agreements were signed with trade unions and 91 association agreements were signed with associations of persons. Twenty-six sectoral agreements and 15 occupational agreements are also in force. The Committee further notes, however, the continuing concerns of the GSEE that associations of persons still remain in detriment to democratically elected and functioning sectoral trade unions. **Recalling the importance of promoting collective bargaining with workers' organizations and thus improving collective bargaining coverage, the Committee requests the Government to reply in detail and to indicate the steps taken to promote collective bargaining with trade unions at all levels, including by considering, in consultation with the social partners, the possibility of trade union sections being formed in small enterprises.**

Articles 1 and 3. Adequate protection against anti-union dismissal.

In its previous comments, following concerns raised by the GSEE, the Committee had requested the Government to provide information and statistics relating to complaints of anti-union discrimination and any remedial action taken. The Committee notes the information provided that, in 2017, the labour inspectorate had handled 30 complaints related to hindrances to union members to take part in union action. Twelve of these cases were resolved according to the inspectorate recommendation, while seven cases were filed and 11 were referred to the civil courts. The inspectorate also handled 22 cases of dismissals of trade union officials of which ten were resolved, ten were referred to the courts and two were handled with fines. The Government attaches great interest to such infringements and classifies them as very serious. **The Committee requests the Government to continue to provide information and statistics relating to complaints of anti-union discrimination and any remedial action taken.**

ANNEX III

Guidance on labour dispute resolution from international labour standards

Informal Note provided in the context of the ILO project on “Supporting the implementation of the roadmap on tackling undeclared work in Greece” funded by the European Commission / DG REFORM (July 2020)

Introduction

No single international labour standard directly and comprehensively addresses the issue of labour dispute resolution. Four Recommendations are devoted to aspects of the topic.⁸⁴ Provisions in many instruments in the wider body of international labour standards also contain guidance on how to establish and maintain an effective labour dispute prevention and resolution system. Taken together, they recommend that member States establish systems that:

- Rely on joint participation to investigate and resolve complaints or grievances
- Support voluntary collective bargaining, including through conciliation and arbitration and
- Can lead to binding outcomes, including through courts and tribunals.

This note provides a summary of key principles in international labour standards. It refers to selected Articles from Conventions and Paragraphs from Recommendations. The full text of the instruments can also be consulted.

Distinguishing between types of labour disputes

International labour standards do not establish strict definitions of individual or collective labour disputes, nor systematically categorize the specific mechanisms for their respective resolution. However, certain instruments and provisions are more applicable to individual disputes in comparison to collective disputes, and vice versa.

For example, the **Examination of Grievances Recommendation, 1967 (No. 130)** applies to the situation where “any worker who, acting individually or jointly with other workers, considers that he has grounds for a grievance” (para. 2). According to para. 3: “the grounds for a grievance may be any measure or situation which concerns the relations between employer and worker.” However, the Recommendation does not apply to “collective claims aimed at the modification of terms and conditions of employment” (para. 4(1)).⁸⁵

⁸⁴ In particular: the Voluntary Conciliation and Arbitration Recommendation, 1951 (No. 92); the Co-operation at the Level of the Undertaking Recommendation, 1952 (No. 94); the Communications within the Undertaking Recommendation, 1967 (No. 129); and the Examination of Grievances Recommendation, 1967 (No. 130).

⁸⁵ For policy guidance on how to implement the Recommendation, see the ILO Fact Sheet on Grievance Handling: https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_622209.pdf

Introduction

Distinguishing between types of labour disputes



The distinction drawn in this Recommendation reflects the practice of ILO member States. In many national legal frameworks, individual disputes are those that arise from the interpretation, application or violation of work rights. These rights may be established in laws, employment contracts, collective agreements, arbitrated awards, as well as in custom and practice.^{86/87} The wording above also encompasses disputes relating to existing rights that are not subject to collective bargaining,⁸⁸ but brought forward, for instance, by workers' organizations in a collective capacity. In this regard, Recommendation No. 130 importantly provides the following:

"The determination of the distinction between cases in which a complaint submitted by one or more workers is a grievance to be examined under the procedures provided for in this Recommendation and cases in which a complaint is a general claim to be dealt with by means of collective bargaining or under some other procedure for settlement of disputes is a matter for national law or practice." (emphasis added).

General guidance for the effective functioning of national labour dispute systems

ILO member States, in developing mechanisms for individual and collective labour disputes, should ensure that such mechanism function effectively. International labour standards identify several key elements to ensure effectiveness, for the resolution of both individual and collective disputes. These elements include:

- Consensus-seeking
- Fairness
- Impartiality
- Informality
- Affordability
- Rapidity
- Expertise

⁸⁶ For example, in Germany individual disputes are understood to relate to rights resulting from the employment contract itself, and from the regulatory framework that governs the employment relationship. This means that an individual worker may submit a claim in relation to rights established by collective agreements and all other workplace agreements such as those agreed by Works Councils, as much as those established by legislation.

⁸⁷ See ILO, 2016, "Resolving Individual Labour Dispute: a Comparative Overview", for comprehensive analysis on the different approaches adopted in 9 countries, including France, Germany, Spain, Sweden and United Kingdom. Available at: https://www.ilo.org/global/publications/books/WCMS_488469/lang-en/index.htm

⁸⁸ Article 2 of the Collective Bargaining Convention, 1981 (No. 154) provides that "for the purpose of this Convention the term collective bargaining "extends to all negotiations which take place between an employer, a group of employers or one or more employers' organisations, on the one hand, and one or more workers' organisations, on the other, for: (a) determining working conditions and terms of employment; and/or (b) regulating relations between employers and workers; and/or (c) regulating relations between employers or their organisations and a workers' organisation or workers' organisations."



<p>Voluntary Conciliation and Arbitration Recommendation, 1951 (No. 92).</p>	<p>This machinery should be voluntary, free of charge and expeditious. Time limits for proceedings prescribed by national laws or regulations should be fixed in advance, and kept to a minimum.⁸⁹</p>
<p>Examination of Grievances Recommendation, 1967 (No. 130)</p>	<p>Dispute prevention and resolution procedures at the undertaking should be consensus-seeking,⁹⁰ uncomplicated, and as rapid as possible. This calls for limited formalities, and possible time-limits.⁹¹ The worker should have the right to be represented in any workplace proceedings by a trade union representative.⁹² Similarly, the employer should have the right to be represented by an employers' organization.⁹³</p>
<p>Social Protection Floors Recommendation, 2012 (No. 202)</p>	<p>"Impartial, transparent, effective, simple, rapid, accessible and inexpensive complaint and appeal procedures should also be specified. Access to complaint and appeal procedures should be free of charge to the applicant. Systems should be in place that enhance compliance with national legal frameworks."⁹⁴</p>
<p>Violence and Harassment Recommendation, 2019 (No. 206)</p>	<p>Provides guidance that is relevant to ensuring effective mechanisms and processes for individual labour disputes in general: "The complaint and dispute resolution mechanisms for gender-based violence and harassment referred to in Article 10(e) of the Convention should include measures such as:</p> <ul style="list-style-type: none"> (a) courts with expertise in cases of gender-based violence and harassment (b) timely and efficient processing (c) legal advice and assistance for complainants and victims (d) guides and other information resources available and accessible in the languages that are widely spoken in the country and (e) shifting of the burden of proof, as appropriate, in proceedings other than criminal proceedings."⁹⁵

⁸⁹ Paragraph 3(1).

⁹⁰ Paragraph 11.

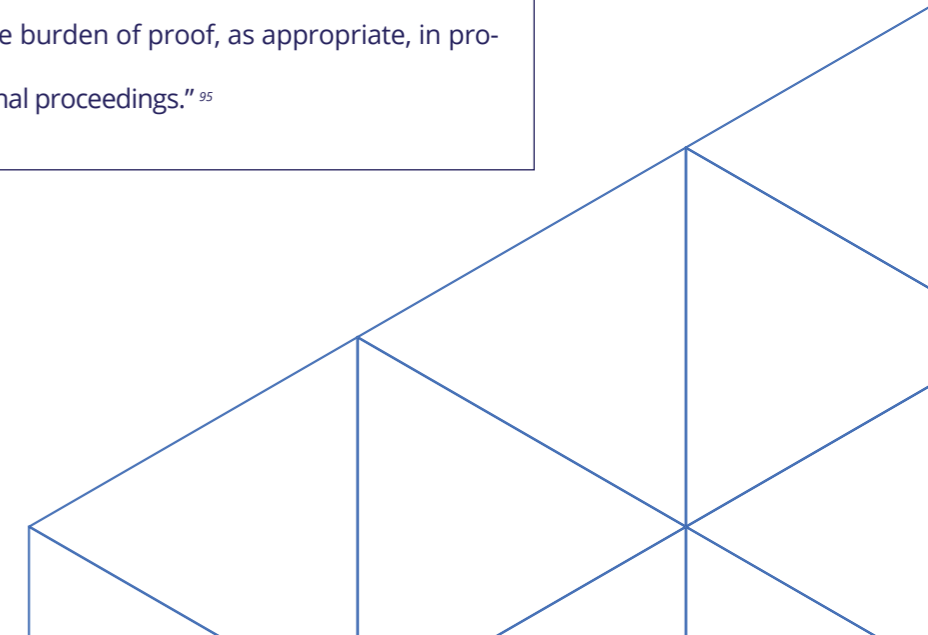
⁹¹ Paragraph 12.

⁹² Paragraph 13(1).

⁹³ Paragraph 13(2).

⁹⁴ Paragraph 7.

⁹⁵ Paragraph 16.



The right to effective remedy

The right to effective remedy is a cornerstone for any dispute resolution mechanism. A number of instruments provide relevant guidance in ensuring effective and enforceable outcomes of dispute resolution procedures.

Right to Organise and Collective Bargaining Convention, 1949 (No. 98)	"Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment." ⁹⁶
Termination of Employment Convention, 1982 (No. 158)	"If the bodies referred to in Article 8 of this Convention find that termination is unjustified and if they are not empowered or do not find it practicable, in accordance with national law and practice, to declare the termination invalid and/or order or propose reinstatement of the worker, they shall be empowered to order payment of adequate compensation or such other relief as may be deemed appropriate." ⁹⁷
Voluntary Conciliation and Arbitration Recommendation, 1951 (No. 92)	All agreements which the parties may reach during the conciliation procedure or as a result thereof should be drawn up in writing and be regarded as equivalent to collective agreements. ⁹⁸
Examination of Grievances Recommendation, 1967 (No. 130)	<p>Nothing should limit "the right of a worker to apply directly to the competent labour authority or to a labour court or other judicial authority in respect of a grievance, where such right is recognised under national laws or regulations."⁹⁹</p> <p>"Where all efforts to settle the grievance within the undertaking have failed, there should be a possibility, account being taken of the nature of the grievance, for final settlement of such grievance through one or more of the following procedures:</p> <p>(a) procedures provided for by collective agreement, such as joint examination of the case by the employers' and workers' organizations concerned or voluntary arbitration by a person or persons designated with the agreement of the employer and worker concerned or their respective organizations</p> <p>(b) conciliation or arbitration by the competent public authorities</p> <p>(c) recourse to a labour court or other judicial authority</p> <p>(d) any other procedure which may be appropriate under national conditions."¹⁰⁰</p>

⁹⁶ Article 1.

⁹⁷ Article 10.

⁹⁸ Paragraph 5.

⁹⁹ Paragraph 9.

¹⁰⁰ Paragraph 17.

Violence and Harassment Recommendation, 2019 (No. 206)	<p>"The remedies referred to in Article 10(b) of the Convention could include:</p> <p>(a) the right to resign with compensation</p> <p>(b) reinstatement</p> <p>(c) appropriate compensation for damages</p> <p>(d) orders requiring measures with immediate executory force to be taken to ensure that certain conduct is stopped or that policies or practices are changed; and</p> <p>(e) legal fees and costs according to national law and practice."¹⁰¹</p>
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Guidance from international labour standards applicable to individual labour disputes

While the instruments listed below are not exclusive to individual labour disputes, depending on national practice, the guidance provided is particularly applicable to the resolution of individual, rights-based disputes.

I. Ensuring access to effective dispute prevention and resolution mechanisms

Termination of Employment Convention, 1982 (No. 158)	"In order for the worker not to have to bear alone the burden of proving that the termination was not justified, the methods of implementation referred to in Article 1 of this Convention shall provide for one or the other or both of the following possibilities: (a) the burden of proving the existence of a valid reason for the termination as defined in Article 4 of this Convention shall rest on the employer; (...)" ¹⁰²
Violence and Harassment Convention, 2019 (No. 190)	Provides for the need for effective mechanisms to address disputes arising from the alleged violation of work rights. Article 10 calls on member States to ensure that victims have access to "safe, fair and effective reporting and dispute resolution mechanisms and procedures in cases of violence and harassment in the world of work."
Examination of Grievances Recommendation, 1967 (No. 130)	<p>Provides general guidance for the examination of individual labour disputes, as follows: "Any worker who, acting individually or jointly with other workers, considers that he has grounds for a grievance should have the right:</p> <p>(a) to submit such grievance without suffering any prejudice whatsoever as a result and</p> <p>(b) to have such grievance examined pursuant to an appropriate procedure."¹⁰³</p>

¹⁰¹ Paragraph 14.

¹⁰² Article 9 (2).

¹⁰³ Paragraph 2.

<p>Workers' Representatives Recommendation, 1971 (No. 143)</p>	<p>"Where there are not sufficient relevant protective measures applicable to workers in general, specific measures should be taken to ensure effective protection of workers' representatives. These might include such measures as the following: (...) (d) in respect of the unjustified termination of employment of workers' representatives, provision for an effective remedy which, unless this is contrary to basic principles of the law of the country concerned, should include the reinstatement of such representatives in their job, with payment of unpaid wages and with maintenance of their acquired rights; (e) provision for laying upon the employer, in the case of any alleged discriminatory dismissal or unfavourable change in the conditions of employment of a workers' representative, the burden of proving that such action was justified; (...)"¹⁰⁴</p>
<p>HIV and AIDS Recommendation, 2010 (No. 200)</p>	<p>"Members should have in place easily accessible dispute resolution procedures which ensure redress for workers if their rights set out above are violated."</p>

II Procedures at the undertaking

<p>Examination of Grievances Recommendation, 1967 (No. 130)</p>	<p>Provides that, as a general rule, "an attempt should initially be made to settle grievances directly between the worker affected, whether assisted or not, and his (her) immediate supervisor" at the workplace level.¹⁰⁵</p> <p>If that is tried without success, or the grievance "is of such a nature that a direct discussion between the worker affected and his immediate supervisor would be inappropriate, the worker should be entitled to have his (her) case considered at one or more higher steps, depending on the nature of the grievance and on the structure and size of the undertaking"¹⁰⁶.</p> <p>The Recommendation also adds that "When procedures for the examination of grievances are established through collective agreements, the parties to such an agreement should be encouraged to include therein a provision to the effect that, during the period of its validity, they undertake to promote settlement of grievances under the procedures provided and to abstain from any action which might impede the effective functioning of these procedures"¹⁰⁷.</p>
<p>Termination of Employment Recommendation, 1982 (No. 166)</p>	<p>In the event of an individual dispute over termination of employment, "a worker should be entitled to be assisted by another person when defending himself, (...), against allegations regarding (her) conduct or performance liable to result in the termination of his (her) employment."¹⁰⁸</p>

¹⁰⁴ Paragraph 6 (1) and (2) (d) (e).

¹⁰⁵ Paragraph 10(1).

¹⁰⁶ Paragraph 10(2).

¹⁰⁷ Paragraph 5.

¹⁰⁸ Paragraph 9.

III Procedures outside the undertaking

Where dispute prevention or resolution mechanisms at the workplace level are not possible, or have failed, member States should ensure access to a range of appropriate mechanisms through competent authorities.

<p>Termination of Employment Convention, 1982 (No. 158)</p>	<p>"A worker who considers that his (her) employment has been unjustifiably terminated shall be entitled to appeal against that termination to an impartial body, such as a court, labour tribunal, arbitration committee or arbitrator."¹⁰⁹</p>
<p>Domestic Workers Convention, 2011 (No. 189)</p>	<p>"Each Member shall take measures to ensure, in accordance with national laws, regulations and practice, that all domestic workers, either by themselves or through a representative, have effective access to courts, tribunals or other dispute resolution mechanisms under conditions that are not less favourable than those available to workers generally."¹¹⁰</p>
<p>Maritime Labour Convention, 2006</p>	<p>"Seafarers and ship-owners, like all other persons, are equal before the law and are entitled to the equal protection of the law and shall not be subject to discrimination in their access to courts, tribunals or other dispute resolution mechanisms."¹¹¹</p>
<p>The Migration for Employment Recommendation, 1949, (No. 86)</p>	<p>"In case of a dispute between a migrant and his employer, the migrant shall have access to the appropriate courts or shall otherwise obtain redress for his (her) grievances, in accordance with the laws and regulations of the territory of immigration."¹¹²</p>
<p>Examination of Grievances Recommendation, 1967 (No. 130)</p>	<p>"Where all efforts to settle the grievance within the undertaking have failed, there should be a possibility, account being taken of the nature of the grievance, for final settlement of such grievance through one or more of the following procedures:</p> <p>(a) procedures provided for by collective agreement, such as joint examination of the case by the employers' and workers' organizations concerned or voluntary arbitration by a person or persons designated with the agreement of the employer and worker concerned or their respective organizations</p> <p>(b) conciliation or arbitration by the competent public authorities</p> <p>(c) recourse to a labour court or other judicial authority</p> <p>(d) any other procedure which may be appropriate under national conditions."¹¹³</p>

¹⁰⁹ Article 8.

¹¹⁰ Article 16.

¹¹¹ Title 5, point 4.

¹¹² Art. 16 of the Model Agreement on Temporary and Permanent Migration for Employment, Annexed to the Convention.

¹¹³ Paragraph 17.

<p>Labour Administration Recommendation, 1978 (No. 158)</p>	<p>“The competent bodies within the system of labour administration should be in a position to provide, in agreement with the employers’ and workers’ organizations concerned, conciliation and mediation facilities, appropriate to national conditions, in case of collective disputes.”¹¹⁴</p>
<p>Employment Relationship Recommendation, 2006 (No. 198)</p>	<p>“The settlement of disputes concerning the existence and terms of an employment relationship should be a matter for industrial or other tribunals or arbitration authorities to which workers and employers have effective access in accordance with national law and practice.”¹¹⁵</p>
<p>Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203)</p>	<p>“Members should take measures to ensure that all victims of forced or compulsory labour have access to justice and other appropriate and effective remedies, such as compensation for personal and material damages, including by:</p>
	<p>(a) ensuring, in accordance with national laws, regulations and practice, that all victims, either by themselves or through representatives, have effective access to courts, tribunals and other resolution mechanisms, to pursue remedies, such as compensation and damages</p> <p>(b) providing that victims can pursue compensation and damages from perpetrators, including unpaid wages and statutory contributions for social security benefits</p> <p>(c) ensuring access to appropriate existing compensation schemes</p> <p>(d) providing information and advice regarding victims’ legal rights and the services available, in a language that they can understand, as well as access to legal assistance, preferably free of charge and</p> <p>(e) providing that all victims of forced or compulsory labour that occurred in the member State, both nationals and non-nationals, can pursue appropriate administrative, civil and criminal remedies in that State, irrespective of their presence or legal status in the State, under simplified procedural requirements, when appropriate.”¹¹⁶</p>

¹¹⁴ Paragraph 10.

¹¹⁵ Paragraph 14.

¹¹⁶ Paragraph 12

Guidance from international labour standards applicable to collective labour disputes

In the prevention and resolution of collective disputes, international labour standards provide the following general guidance:

- Prevention, where possible, is better than resolution by third parties.
- Where preventive measures fail, parties should seek to resolve the problem through joint and consensus-based processes.
- Where parties fail to resolve the problem, neutral third-party intervention may be invoked, but it should involve the parties as much as possible.
- In general, the settlement of collective labour disputes should be done through mediation, conciliation and voluntary arbitration.¹¹⁷

I. The ILO Recommendation which addresses collective interest disputes exclusively is the Voluntary Conciliation and Arbitration Recommendation, 1951 (No. 92)

<p>Voluntary Conciliation and Arbitration Recommendation, 1951 (No. 92)</p>	<p>Conciliation machinery should be made available to assist in the prevention and settlement of labour disputes between workers and employers.¹¹⁸</p> <p>Where voluntary conciliation machinery is constituted on a joint basis it should include equal representation of employers and workers.¹¹⁹</p> <p>Provisions should be made to enable the procedure to be set in motion either on the initiative of any party to a dispute or ex officio by the voluntary conciliation authority.¹²⁰</p> <p>When a dispute has been submitted for conciliation or arbitration with the consent of all parties concerned, the parties should be encouraged to refrain from strikes or lock outs for the duration of the conciliation and arbitration process.¹²¹</p>
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¹¹⁷ ILO General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization, 2012:

- On the issue of **compulsory arbitration**: The Committee of Experts on the Application of Conventions and Recommendations (CEACR) considers that “Compulsory arbitration in the case that the parties have not reached agreement is generally contrary to the principles of collective bargaining. In the Committee’s opinion, compulsory arbitration is only acceptable in certain specific circumstances, namely: (i) in essential services in the strict sense of the term, that is those the interruption of which would endanger the life, personal safety or health of the whole or part of the population; (ii) in the case of disputes in the public service involving public servants engaged in the administration of the State; (iii) when, after protracted and fruitless negotiations, it becomes obvious that the deadlock will not be broken without some initiative by the authorities; or (iv) in the event of an acute crisis. However, arbitration accepted by both parties (voluntary) is always legitimate. In all cases, the Committee considers that, before imposing arbitration, it is highly advisable that the parties be given every opportunity to bargain collectively, during a sufficient period, with the help of independent mediation.” (para. 247)

- On the issue of the **conclusion of a first collective agreement**: “While the Committee considers that arbitration imposed by the authorities at the request of one party is generally contrary to the principle of the voluntary negotiation of collective agreements, it can envisage an exception in the case of provisions allowing workers’ organizations to initiate such a procedure for the conclusion of a first collective agreement. As experience shows that first collective agreements are often one of the most difficult steps in establishing sound industrial relations, these types of provisions may be considered to constitute machinery and procedures intended to promote collective bargaining.” (para. 250)

Available at: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_174846.pdf.

¹¹⁸ Paragraph 1.

¹¹⁹ Paragraph 2.

¹²⁰ Paragraph 3(2).

¹²¹ Paragraphs 4 and 6

II. Other international labour standards relevant to the prevention and resolution of collective interest disputes

<p>Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)</p>	<p>“Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization.”¹²²</p> <p>Member States should “take all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organise.”¹²³</p> <p>«1. In exercising the rights provided for in this Convention workers and employers and their respective organisations, like other persons or organised collectivities, shall respect the law of the land.</p> <p>2. The law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention.”¹²⁴</p>
<p>Right to Organise and Collective Bargaining Convention, 1949 (No. 98)</p>	<p>“Machinery appropriate to national conditions shall be established, where necessary, for the purpose of ensuring respect for the right to organise...”¹²⁵</p> <p>“Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers’ organizations and workers’ organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements.”¹²⁶</p>
<p>Collective Bargaining Convention, 1981 (No. 154) and the accompanying Collective Bargaining Recommendation, 1981 (No. 163)</p>	<p>The standards set up in these two instruments stipulate that measures adapted to national conditions should be taken to create, “bodies and procedures for the settlement of labour disputes (...) to contribute to the promotion of collective bargaining.”¹²⁷</p> <p>Procedures to assist the parties in finding a solution to disputes, whether the dispute is of a collective or an individual nature.¹²⁸</p>

¹²² Article 2.

¹²³ Article 11.

¹²⁴ Article 8

¹²⁵ Article 3.

¹²⁶ Article 4.

¹²⁷ Article 5 of the Convention.

¹²⁸ Paragraph 8 of the Recommendation.

<p>Labour Relations (Public Service) Convention, 1978 (No. 151)</p>	<p>“The settlement of disputes arising in connection with the determination of terms and conditions of employment shall be sought, as may be appropriate to national conditions, through negotiation between the parties or through independent and impartial machinery, such as mediation, conciliation and arbitration, established in such a manner as to ensure the confidence of the parties involved ”.¹²⁹</p>
<p>Collective Agreements Recommendation, 1951 (No. 91)</p>	<p>“Disputes arising out of the interpretation of a collective agreement should be submitted to an appropriate procedure for settlement established either by agreement between the parties or by laws or regulations as may be appropriate under national conditions.”¹³⁰</p>
<p>Labour Administration Recommendation, 1978 (No. 158)</p>	<p>“Competent bodies within the system of labour administration should be in a position to provide, in agreement with the employers’ and workers’ organizations concerned, conciliation and mediation facilities, appropriate to national conditions, in case of collective disputes.”¹³¹</p>

Annex - On the role of administrative authorities in dispute resolution

In many countries, labour administration systems play an important role in ensuring the effective organization and operation of labour dispute prevention and resolution systems. The tables below summarize some of the provisions of relevant international labour standards in this area, especially regarding the role of labour inspection, as well as relevant comments by the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR).¹³²

Relevant international labour standards

<p>Labour Administration Convention, 1978 (No. 150)</p>	<p>The competent bodies within the system of labour administration shall, as appropriate, “make their services available to employers and workers, and their respective organizations, as may be appropriate under national laws or regulations, or national practice, with a view to the promotion – at national, regional and local levels as well as at the level of the different sectors of economic activity – of effective consultation and co-operation between public authorities and bodies and employers’ and workers’ organizations, as well as between such organizations.”¹³³</p>
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¹²⁹ Article 8.

¹³⁰ Paragraph 6.

¹³¹ Paragraph 10.

¹³² The CEACR is composed of 20 eminent jurists appointed by the ILO Governing Body to examine governments’ reports on ratified ILO Conventions. The experts come from different geographic regions, legal systems and cultures. The role of the Committee of Experts is to provide an impartial and technical evaluation of the application of international labour standards in ILO member States. The comments by the CEACR are available on NORMLEX: <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:1:0>

¹³³ Article 6 (2) (c).

<p>Labour Inspection Convention, 1947 (No. 81)</p>	<p>“The functions of the system of labour inspection shall be:</p> <p>1. (a) to secure the enforcement of the legal provisions relating to conditions of work and the protection of workers (...); (b) to supply technical information and advice to employers and workers concerning the most effective means of complying with the legal provisions; (c) to bring to the notice of the competent authority defects or abuses not specifically covered by existing legal provisions.</p> <p>2. Any further duties which may be entrusted to labour inspectors shall not be such as to interfere with the effective discharge of their primary duties or to prejudice in any way the authority and impartiality which are necessary to inspectors in their relations with employers and workers.”¹³⁴</p> <p><i>“The inspection staff shall be composed of public officials whose status and conditions of service are such that they are assured of stability of employment and are independent of changes of government and of improper external influences.”</i>¹³⁵</p>
<p>Labour Inspection (Agriculture) Convention, 1969 (No. 129)</p>	<p>1. “The functions of the system of labour inspection in agriculture shall be:</p> <p>a) to secure the enforcement of the legal provisions relating to conditions of work and the protection of workers while engaged in their work, such as provisions relating to hours, wages, weekly rest and holidays, safety, health and welfare, the employment of women, children and young persons, and other connected matters, in so far as such provisions are enforceable by labour inspectors</p> <p>b) to supply technical information and advice to employers and workers concerning the most effective means of complying with the legal provisions</p> <p>c) to bring to the notice of the competent authority defects or abuses not specifically covered by existing legal provisions and to submit to it proposals on the improvement of laws and regulations.</p> <p>2. National laws or regulations may give labour inspectors in agriculture advisory or enforcement functions regarding legal provisions relating to conditions of life of workers and their families.</p> <p>3. Any further duties which may be entrusted to labour inspectors in agriculture shall not be such as to interfere with the effective discharge of their primary duties or to prejudice in any way the authority and impartiality which are necessary to inspectors in their relations with employers and workers.”</p>
<p>Labour Inspection Recommendation, 1947 (No. 81)</p>	<p>The functions of labour inspectors should not include that of acting as conciliator or arbitrator in proceedings concerning labour disputes.¹³⁶</p>

¹³⁴Article 3.

¹³⁵Article 6.

¹³⁶Paragraph 8.

<p>Labour Inspection (Agriculture) Recommendation, 1969 (No. 133)</p>	<p>«3. (1) Normally, the functions of labour inspectors in agriculture should not include that of acting as conciliator or arbitrator in proceedings concerning labour disputes.</p> <p>(2) Where no special bodies for this purpose exist in agriculture, labour inspectors in agriculture may be called upon as a temporary measure to act as conciliators.</p> <p>(3) In the case provided for by subparagraph (2) of this Paragraph, the competent authority should take measures in harmony with national law and compatible with the resources of the labour department of the country concerned with a view to relieving labour inspectors progressively of such functions, so that they are able to devote themselves to a greater extent to the actual inspection of undertakings.”</p>
<p>Labour Administration Recommendation, 1978 (No. 158)</p>	<p>The competent bodies within the system of labour administration should be in a position to provide, in agreement with the employers’ and workers’ organizations concerned, conciliation and mediation facilities, appropriate to national conditions, in case of collective disputes.¹³⁷</p>

Comments by the CEACR – ILO 2006 General Survey on Labour Inspection

<p>ILO 2006 General Survey on Labour Inspection¹³⁸</p>	<p>Para. 72. “The Committee recalls the importance of avoiding overburdening inspectorates with tasks, which by their nature may in certain countries be understood as incompatible with their primary function of enforcing legal provisions.</p> <p>It observes that there are countries in which conciliation is regarded as a natural aspect of the function of labour inspector because, as public officials closest to the social partners, and because of their qualities of independence and impartiality foreseen in Article 6 of Convention No. 81, labour inspectors are considered to be in the best position to understand conflicts between workers and their employers.</p> <p>However, Recommendation No. 81 provides that “the functions of labour inspectors should not include that of acting as conciliator or arbitrator in proceedings concerning labour disputes.” Accordingly, in many countries, the roles of conciliation and enforcement are separated for two reasons. Firstly, because in those countries the nature and role of labour inspection are such that conciliation of labour disputes unrelated to a breach of the law is not effective. Secondly, the time and energy that inspectors spend on seeking solutions to collective labour disputes is often at the expense of their primary duties.”</p>
	<p>Para. 74. “Assigning conciliation and mediation in collective labour disputes to a specialized body or officials enables labour inspectors to carry out their supervisory function more consistently. This should result in better enforcement of the legislation and hence a lower incidence of labour disputes.”</p>

¹³⁷ Paragraph 10.

¹³⁸ International Labour Conference, 95th Session, 2006, Report III (Part 1B), General Survey of the reports concerning the Labour Inspection Convention, 1947 (No. 81), and the Protocol of 1995 to the Labour Inspection Convention, 1947, and the Labour Inspection Recommendation, 1947 (No. 81), the Labour Inspection (Mining and Transport) Recommendation, 1947 (No. 82), the Labour Inspection (Agriculture) Convention, 1969 (No. 129), and the Labour Inspection (Agriculture) Recommendation, 1969 (No. 133). Available at: [https://www.ilo.org/public/libdoc/ilo/P/09661/09661\(2006\)1B.pdf](https://www.ilo.org/public/libdoc/ilo/P/09661/09661(2006)1B.pdf)



ANNEX IV Individual and collective labour dispute settlement systems – A comparative review

ANNEX IV

Executive summary

Aristea Koukiadakis¹³⁹

The designations employed in ILO publications, which are in conformity with United Nations practice, and the presentation of material therein do not imply the expression of any opinion whatsoever on the part of the International Labour Office concerning the legal status of any country, area or territory or of its authorities, or concerning the delimitation of its frontiers.

The responsibility for opinions expressed in signed articles, studies, and other contributions rests solely with their authors, and publication does not constitute an endorsement by the International Labour Office of the opinions expressed in them.

Reference to names of firms and commercial products and processes does not imply their endorsement by the International Labour Office, and any failure to mention a particular firm, commercial product or process is not a sign of disapproval.

Introduction

Procedural note

This executive summary reflects the contents of the report that was commissioned in the framework of the project, namely the initial unedited “Comparative review of individual and collective labour dispute settlement systems” by Dr Aristea Koukiadaki. Another unedited initial report on “Study on facilities for trade union officials and members to exercise their rights” was authored by Professor Filip Dorssemont. Two background reports on Greece on the same topics had been drafted by Professor Costas Papadimitriou and relevant findings of these reports were incorporated into the international reports, as background information for comparative analysis. At a later stage, they would also provide a solid background in order to identify relevant areas of concern and draft policy recommendations for the Greek context.

A table of content of the full report and a set of comparative tables can be found in the Annex. The executive summary was used as basis for discussions with the Government and social partners in June 2020.

**Individual and
collective labour
dispute settlement
systems –
A comparative
review**

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Scope and structure of the report

Scope and structure of the report

Conflict and its management are permanent features of organizational life with important implications for a wide range of employer- and worker-related issues. From a labour law perspective, the issue of conflict is, in principle, dealt under the concept of labour disputes. The report investigates specific individual and collective labour dispute resolution practices and institutions in a sample of countries selected to reflect different legal and industrial relations systems: Australia, Belgium, France, Spain, Sweden and the United Kingdom (UK). The analysis sets out the characteristics of the individual and collective labour disputes resolution processes and sheds light on these with a view to identifying, where possible, good practices and addressing some of the issues arising from the evolving labour relations framework in Greece. In doing so, attention is paid to the linkages between practices and institutions within each of these countries and the nature of complementarities, if available¹⁴⁰, as well as the broader role of dispute resolution mechanisms in conflict development, including the issue of preventive mechanisms.

The report is structured as follows. Section 2 outlines the main international and European labour standards in the area of individual and collective disputes, paying particular attention to the principles of efficiency, equity and voice. Section 3 then discusses existing research on the relationship between dispute resolution systems and the legal and industrial relations context and summarises the main developments in terms of the nature and extent of labour disputes. Section 4 provides an overview of the main features of the dispute resolution mechanisms with regard to individual disputes. In this respect, particular emphasis is placed on institutions, including labour inspectorates and human rights agencies, which provide scope for disputes to be resolved before they enter the judicial domain.

Section 5 considers the resolution mechanisms in respect of collective disputes with a view to ascertaining their operation in particular contexts. In this respect, the role of social dialogue in the design and operation of these mechanisms as well as the range and nature of mechanisms, with a particular emphasis on conciliation, mediation and arbitration, are assessed.

¹⁴⁰ The analysis is not intended to examine substantive labour rights as such, although the interplay will be addressed where relevant (e.g. in respect of industrial action).

International and European labour standards on labour dispute resolution

International and European labour standards on labour dispute resolution

For the purpose of comparing and evaluating the national-level dispute resolution systems, the analytical framework is based on the ILO, European Union and Council of Europe standards concerning labour dispute resolution. No single international labour standard addresses comprehensively the issue of labour dispute resolution. However, provisions in many ILO instruments give guidance on how to establish and maintain an effective labour dispute prevention and resolution system.¹⁴¹ Furthermore, international labour standards do not establish strict definitions of individual or collective labour disputes. However, certain instruments and provisions are more applicable to individual disputes in comparison to collective disputes, and vice versa.

Section 2 of the report illustrates how the actors, mechanisms and processes specified for dispute resolution in these legal and institutional contexts are broadly consistent with the notions of efficiency, equity, and voice.¹⁴² An efficient dispute resolution system is one that conserves scarce resources, including time and money. Efficiency in the area of dispute resolution should be interpreted from the perspective of both employers' needs and workers' interests.¹⁴³ Efficient workplace dispute resolution methods that promote timely and inexpensive settlements can serve both employer and employee interests. ILO standards promote, among others, the elimination of barriers to performance via promoting simplified procedures and operations and require that dispute resolution mechanisms be free of charge and expeditious.¹⁴⁴

¹⁴¹ See for instance: *ILO Resolving Individual Labour Disputes – A comparative overview*, ILO 2016. Available at: https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_488469.pdf
See also: *ILO Labour Dispute Systems: Guidelines for improved performance*, ILO 2013. Available at: https://www.ilo.org/ifpdial/information-resources/publications/WCMS_211468/lang-en/index.htm.

¹⁴² Budd, J.W. and Colvin, A.J.S. *Improved metrics for workplace dispute resolution procedures: efficiency, equity and voice*, (2008) 47 *Industrial Relations*, 460.

¹⁴³ Budd and Colvin, n 1 above.

¹⁴⁴ See, for instance, *Voluntary Conciliation and Arbitration Recommendation*, 1951 (No. 92).

An equitable dispute resolution system incorporates concepts such as procedural fairness, equal opportunity, the existence of safeguards - including the ability to appeal decisions to a neutral party - and transparency to prevent arbitrary or capricious decision-making and enhance accountability. Equity is reflected in the requirement, found in a number of ILO standards, for procedures to be, among others, independent, to be applied consistently and without bias.¹⁴⁵ An equitable dispute resolution system also has widespread coverage, independence of resources or expertise and is equally accessible irrespective of gender, race, national origin, other personal characteristics and contractual status (e.g. in the case of individuals in unclear or disguised employment relationships). In this respect, ILO standards require, for example, competent authorities to adopt measures to ensure respect for and the implementation of laws and regulations respecting the employment relationship, including dispute settlement machinery.¹⁴⁶

Finally, voice not only captures the extent to which individuals are able to participate in the operation of the dispute resolution system (e.g. in terms of due process), but it also includes the extent to which individuals and their representatives have input into the construction of the dispute resolution system itself.¹⁴⁷ From an international labour standards perspective, the structure of dispute settlement systems should be designed to promote collective bargaining, for example, by requiring the parties to exhaust all possibilities of reaching a negotiated solution or to exhaust the dispute settlement procedures provided for by their collective agreement before having access to state provided procedures.¹⁴⁸ It also means that management should, in adopting and implementing workplace dispute mechanisms, co-operate with the workers' representatives.¹⁴⁹ In this context, workers' representatives should also be provided with the necessary facilities to be able to carry out their functions promptly and efficiently.¹⁵⁰

¹⁴⁵ See, among others, *Voluntary Conciliation and Arbitration Recommendation, 1951 (No. 92) and the Examination of Grievances Recommendation, 1967 (No. 130)*.

¹⁴⁶ See *Employment Relationship Recommendation, 2006 (No. 198)*.

¹⁴⁷ Budd and Colvin, n 1 above at 464.

¹⁴⁸ See, among others, *Collective Bargaining Convention, 1981 (No. 154)*.

¹⁴⁹ See *Examination of Grievances Recommendation, 1967 (No. 130)*.

¹⁵⁰ See *Workers' Representatives Convention, 1971 (No. 135)*.



Comparative overview of legal/industrial relations systems and incidence and nature of labour disputes

Existing literature, presented in section 3 of the report, suggests that there are associations between the broad characteristics of the legal/industrial relations system of a country and its labour dispute resolution framework. When considering the area of individual labour dispute resolution, research suggests that the typology of industrial relations systems and varieties of capitalism offer a set of strong associations with the main features of employment adjudication.¹⁵¹ In other words, one should expect strong collective actors, and consequently non-legal members in judicial mechanisms, in countries characterised by a tradition of social dialogue and corporatism. In respect of collective labour dispute mechanisms, the status of administrative mechanisms for conciliation, mediation and arbitration (CMA) may reflect the confidence put in the judicial system¹⁵² and the presence or absence of a tradition of collective bargaining.¹⁵³ More recent research qualifies this by suggesting that strong CMA exists when specialized courts prevail and that strong CMA institutions are established to control collective bargaining when unions are powerful but fragmented.¹⁵⁴

When considering the nature and extent of labour disputes, comparative research suggests that there has been a transformation of disputes from large-scale, overt collective disputes to smaller-scale, but possibly more frequent, individual disputes.¹⁵⁵ The forms of conflict may reflect the context that can vary in terms of the type of national regulation: where the regulatory framework for collective representation and industrial action, among others, is restrictive, workers, it has been argued, may express discontent in various individual ways.¹⁵⁶ However, the lack of clear evidence of significant increases in the level of individual-based conflict at the workplace may suggest that patterns of conflict may instead be influenced by the nature of the workplace and managerial relations.¹⁵⁷ In this context, it is argued that a 'resolution gap' has emerged in many workplaces caused by the erosion of effective structures of employee representation on the one hand, and the devolution of responsibility for conflict handling from human resources practitioners to poorly trained operational line managers on the other hand.¹⁵⁸

Comparative overview of legal/industrial relations systems and incidence and nature of labour disputes

¹⁵¹ Corby, S. and Burgess, P. *Adjudicating Employment Rights* (Palgrave, 2014), 21.

¹⁵² If there is a tradition of specialized industrial/labour courts with representation of social partners, then the legal tradition for strong intervention in collective bargaining processes should be weak (Valdes Dal-Re V. *Labour Conciliation, Mediation and Arbitration in European Union Countries* (Ministerio De Trabajo Y Asuntos Sociales, 2003).

¹⁵³ In countries where there is a strong tradition of collective bargaining and social dialogue, the resolution procedures for collective disputes allow very little room for institutional or administrative conciliation or mediation bodies to act (ibid).

¹⁵⁴ Ibsen, C. L. *Conciliation, mediation and arbitration in collective bargaining in Western Europe: In search of control* (2019) *European Journal of Industrial Relations*, <https://doi.org/10.1177/0959680119853997>.

¹⁵⁵ For a comprehensive analysis across different national contexts, see Roche, P. W. K., Teague, P., Colvin, A. J. S. (eds) *The Oxford Handbook of Conflict Management in Organisations* (OUP, 2014).

¹⁵⁶ Van Gramberg, B., Teicher, J., Bamber, G. J., and Cooper, B. *A changing world of workplace conflict resolution and employee voice: An Australian perspective, paper presented at Conflict and its Resolution in the Changing World of Work: A Conference and Special Issue honouring David B. Lipsky*, (Ithaca, NY 2017).

¹⁵⁷ Saundry, R. and Dix, J. *Conflict Resolution in the United Kingdom*, in Roche, W. R., Teague, P. and Colvin A. J. S. (eds) *The Oxford Handbook of Conflict Management in Organisations* (OUP, 2014).

¹⁵⁸ Ibid.

Comparative analysis – Individual labour dispute resolution

Section 4 of the report focuses on the case of resolution concerning individual labour disputes and considers the role of non-state procedures and labour administration systems, including administrative agencies and labour inspectorates, as well as the interplay with judicial mechanisms and human rights/equality institutions. Where available, the analysis examines the extent to which such services/mechanisms deal with proactive conflict prevention, including in the context of Small and Medium Enterprises (SMEs), and addresses the issue of access for individuals in unclear or disguised employment.

Common themes to resolving individual labour disputes are found across different systems. These include that most systems provide multiple avenues in seeking redress, focusing primarily, though, on conciliation and mediation, while, even as a last resort, arbitration is not often used. On the other hand, differences largely pertain to the ways the dispute resolution mechanisms have been established and operate, their coverage, as well as how they inter-relate to other institutions, including judicial mechanisms, labour inspectorates and human rights' institutions. In countries where collective voice mechanisms play a key role in the prevention and handling of disputes, extra-judicial administrative dispute resolution services tend not to be offered (e.g. in Sweden). In contrast, in systems where the extent and effectiveness of collective voice mechanisms has been reduced in recent decades (e.g. the UK), labour administration institutions and other agencies play a major role in providing CMA services.¹⁵⁹ Marked differences are also evident regarding the extent to which CMA usage is fully established and used, with evidence suggesting that the interplay with judicial mechanisms is significant in this respect (e.g. in France).

The role of labour inspection in conciliation proceedings is addressed by the Labour Inspection Convention, 1947 (No. 81) and by its accompanying Recommendation No. 81, which need to be interpreted in light of the comments made by the ILO Committee of Experts.¹⁶⁰ Similar to Greece, labour inspectorates are involved in dispute resolution in a number of systems (i.e. Australia, Belgium, France and Spain). Differences exist in terms of the nature of the institutionalization of such intervention as well as the extent of their competences. The example of Australia illustrates how labour inspectorates can be integrated in the dispute resolution framework and also points to the role of the labour inspectorates in dispute resolution processes involving workers in unclear employment relationships. Human rights/anti-discrimination bodies also tend to provide a range of services, including monitoring the implementation of anti-discrimination legislation, conducting investigations, issuing recommendations/opinions awareness raising and training activities, advisory assistance, mediation, monitoring and inspection measures and offering representation in court. In terms of the effectiveness of dispute resolution mechanisms, research evidence, where available, suggests that the nature of the arrangements, i.e. whether they are multi(bi)lateral or unilateral, helps explain to a large extent the greater legitimacy of certain mechanisms. Systems that are characterised by legal/institutional rules empowering various collective voice mechanisms across extra-judicial and judicial processes tend to perform better in terms of efficiency, equity and voice, as they offer a cheaper, faster and more informal route to settlement than other forms of dispute resolution.¹⁶¹

Further information on the main characteristics of individual labour dispute resolution systems in the countries analysed in the report, including Greece, is presented in the table below (Annex).

¹⁵⁹On this, see also Ebisui, M., Cooney, S. and Fenwick, C. Resolving Individual Labour Disputes: A Comparative Overview (ILO, 2016), 11.

¹⁶⁰ILO General Survey 2006 on Labour Inspection, paras. 72-74. Available at: https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---safework/documents/meetingdocument/wcms_108572.pdf

¹⁶¹See also *ibid*, 6.

Comparative analysis – Collective labour dispute resolution

Section 5 of the report explores the case of resolution in respect of collective labour disputes. The comparative analysis suggests that in a number of countries (e.g. Belgium, Spain, Sweden), social partners have relied on social dialogue and collective bargaining to preclude or limit Government intervention to settle a dispute. In such cases, there is a wide variation in the nature of dispute resolution arrangements (e.g. in terms of the level at which the arrangements operate), which tend to reflect the main characteristics of the collective bargaining system. When it comes to the nature of the institutions tasked with collective labour dispute resolution, the report points to a range of possible combinations. Permanent agencies can be found in the majority of countries, but differences exist in terms of the way the facilities are organized and funded, the professional status of the individuals providing such services, the extent to which they cover different types of collective disputes and their actual usage.

In some countries (e.g. Belgium, Spain and Sweden), dispute resolution mechanisms are intrinsically designed and operate in such a way as to actively support collective bargaining processes. In terms of the nature of the mechanisms, some are integrated into the state administrative framework (e.g. in Belgium) while in other cases, they are accommodated in separate entities (e.g. the Advisory, Conciliation and Arbitration Service (ACAS) in the UK and the National Mediation Office (NMO) in Sweden), with the state supplying them with the necessary organizational, economic, technical and human resources. What is common across a number of countries is that the dispute resolution institutions are jointly managed by and with equal participation of workers' and employers' representatives or the latter play a major role in their management bodies.¹⁶²

The comparative analysis further confirms that the institutionalization of CMA is a characteristic of many systems inside and outside Europe. The main conflict resolution mechanisms for collective labour disputes consist of the classic triad: conciliation, mediation, and arbitration. Conciliation and mediation are most often used, albeit the boundaries between the two are sometimes blurred and differences exist in terms of which aspects of these mechanisms are, if at all, obligatory. Arbitration does not necessarily require a previous breakdown or failure of conciliation or mediation, but its usage is not wide in a number of systems. As a general rule, arbitration is optional, albeit with exceptions in the cases of Australia and Spain, where compulsory arbitration is stipulated in specific cases, e.g. in respect of lower paid workers in Australia. Other notable differences refer to who the providers of the services are, the extent to which these mechanisms apply to conflicts of interests and conflicts of rights and the phase in which the system is activated (e.g. when there is threat of industrial action). Evidence also suggests a growing emphasis on dispute prevention and forms of preventive intervention, with differences regarding the nature of intervention and the interplay with other processes, including collective bargaining. Overall, the evidence points to voice, both in terms of the design and actual operation of resolution mechanisms, as a crucial determinant for the legitimacy and ultimately effectiveness of collective dispute resolution systems.

Further information on the main characteristics of collective labour dispute resolution systems in the countries analysed in the report, including Greece, is presented in the table below (Annex).

¹⁶²See also Valdes Dal-Re, n 150 above.

Conclusion

Conclusion Effective dispute resolution systems reflect the idea that conflict avoidance and resolution are invested with all the characteristics of a public good.¹⁶³ In this respect, both ILO and European standards are broadly consistent with the objective of including efficiency, equity and voice as main goals of dispute resolution. Developing an understanding of the functionalities of national-level dispute resolution systems alongside these dimensions is important for policy-related developments in any context, including in the case of Greece. To that end, the comparative analysis in the report points to a range of possible mechanisms and combinations for resolving individual and collective labour disputes, with a varying extent of effectiveness that is dependent on the characteristics of these mechanisms per se but also their interplay with other legal/institutional arrangements and industrial relations actors. Rather than identifying best practices outside of their context, these should be seen as generally accepted principles of good labour relations that are the result themselves of inclusive social dialogue.¹⁶⁴

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¹⁶³ Welz, C. and Kauppinen, T. *Industrial Action and Conflict Resolution in the New Member States (2005)* 11 *European Journal of Industrial Relations*, 91 at 96.

¹⁶⁴ On a similar point, see Countouris, N. Deakin, S. Freedland, M., Koukiadaki, A. and Prassl, J. *Report on collective dismissals: A comparative and contextual analysis of the law on collective redundancies in 13 European countries (ILO, 2016)*.

Report - Comparative tables

Country/ subject	Australia	Belgium	France	Spain	Sweden	UK	Greece
Nature and extent of reliance on non-state mechanisms	Lack of significant bilateral mechanisms, existence of informal measures	Significant role of bilateral mechanisms (e.g. trade union delegation at workplace level) Extra-judicial dispute resolution services through social dialogue	Significant role of bilateral mechanisms at workplace level (through employee representative channels)	Considerable role of joint procedures through collective agreements (no dismissal)	Significant role of dialogue and negotiations in unionised workplaces	Emphasis on unilateral mechanisms and union representation where unions are recognised	No significant role of bilateral mechanisms in individual labour dispute resolution
Role of labour administration systems and labour inspectorates	Lack of extra-judicial administrative services (Fair Work Commission (FWC) part of the judicial system) Integration of dispute resolution processes in the system of labour inspection	Social conciliation integrated with social dialogue processes Competence of labour inspectorate across a wide range of labour disputes	Lack of extra-judicial administrative dispute resolution services Role of labour inspectors including facilitating amicable conciliation between the parties	Mandatory pre-court administrative conciliation in the private sector Function of labour inspectors includes CMA	Lack of extra-judicial administrative dispute resolution services Activities of the labour inspectorate lie outside the area of individual labour disputes	Compulsory early conciliation before claim to Employment Tribunal Mediation and arbitration services by ACAS Lack of labour inspectorate	Competence of labour inspectorates (SEPE) to provide conciliation
Relationship with judicial mechanisms	Co-existence of the Fair Work Commission (FWC, composed by IR experts) and ordinary courts	Specialised labour courts (participation of lay judges)	Specialised labour courts (conseils de prud'hommes) (participation of lay judges) (participation of lay judges)	Specialised labour courts (composed of a single judge)	Distinction on the basis of union membership or not (in Labour Court, majority of members are representatives of the social partners)	Existence of employment tribunals (two lay judges plus a judge) alongside country courts	Ordinary civil courts (procedural law applicable specific to labour disputes)
Promotion of in-court settlement	Free-of-charge telephone conciliation by the FWC (mostly focusing on dismissal rights)	Conciliation at the request of any of the parties or upon proposal by the judge Scope for mediation with parties' consent	In-tribunal conciliation service offered by two lay councillors Scope for mediation with parties' consent	In-court conciliation pursued first by court secretaries; if it fails then by judges Provision of court-annexed mediation (performed by an out-of-court mediator)	Judges conciliate with the parties' consent during the pre-hearing stage Conciliation can be replaced by mediation if parties agree	In-court mediation with both parties' consent	Provision of mediation conditional on parties' consent

Main characteristics of collective labour dispute resolution systems

Country/ subject	Australia	Belgium	France	Spain	Sweden	UK	Greece
Role of social dialogue in dispute resolution systems	Dispute resolution clauses mandatory for enterprise-level agreements	Joint committees significantly involved in conciliation of collective disputes	Agreements to prevent strikes by establishing a preliminary negotiation, or to set up meetings for the purpose of negotiation during the conflict	Collective agreements establishing dispute resolution procedures and the institutions given the mandate to organize them	Dominance of collectively-agreed solutions to dispute resolution	Negotiated resolution procedures but decline in recent years due to decline of collectivism	Competence, under the law, of the parties to decide jointly on resolution process but lack of such examples in practice
Dispute resolution institutions	FWC or other independent person if appointed under a dispute settlement procedure	Social conciliator officers (public administrative agency in the Ministry of Labour) participating in joint sectoral committees and conciliation boards	Lack of national coordinating office Conflicts handled by labour inspectorate/ Ministry of Labour or the departmental Prefect Wide use of informal conciliation before a judge	SIMA Foundation established by inter-professional agreements and regional equivalents Right of labour inspectorate to intervene in conflicts of interest (on their own accord or if called in by the parties)	National Mediation Office (NMO) operating under the Ministry of Employment	Recourse to ACAS (non-departmental public body Department for Business, Energy and Industrial Strategy (BEIS)) Competence of Labour Inspectorate/Ministry of Labour to provide conciliation Competence of OMED re mediation and arbitration in collective labour disputes	Competence of Labour Inspectorate/ Ministry of Labour to provide conciliation Competence of OMED re mediation and arbitration in collective labour disputes
Modes of dispute resolution	Conciliation, mediation or non-binding opinions (not necessarily arbitration) in enterprise agreements sufficient to comply with legislation Compulsory arbitration in specific cases (1. lower-paid workers; 2. serious breach of bargaining orders; 3. linked to industrial action)	Voluntary conciliation (involving the conciliation board of the joint committee) and mediation as a potential next step if conciliation fails No scope for arbitration	Limited use of out-of-court dispute resolution Conciliation through national or regional conciliation commissions Mediation in the event of failure of conciliation; initiated by the administrative authority at the written and reasoned request of one of the parties or on its own initiative Arbitration subject to consent of both parties	Compulsory mediation (for interest and right disputes) when one of the parties requests it, except in those cases when the agreement of both parties is required Mediation also a pre-procedural requirement in the event of industrial action by any of the parties Voluntary submission by mutual agreement of the parties to arbitration Compulsory arbitration if expressly established in the collective agreement, to end a strike or non-application of company agreement Compulsory arbitration if expressly established in the collective agreement, to end a strike or non-application of company agreement	Conciliation, mediation and arbitration procedures NMO services at the request of the parties or on its own if there is a risk of industrial action Collective agreements on negotiation arrangements avoid the need for compulsory mediation Voluntary/compulsory arbitration if included in collective agreement	Voluntary dispute resolution be initiated by employer, trade union or both Greater use of conciliation than mediation/ arbitration Voluntary recourse to arbitration	Voluntary conciliation at the request of either of the parties (by SEPE/Ministry of Labour) Provision of mediation by OMED (upon request by either of the parties) Compulsory arbitration in specific cases (1. essential services or public sector companies; 2. general interest linked to the functioning of the national economy)



ANNEX V
Facilities for trade union officials and members to exercise their rights – A comparative review

ANNEX V

Executive Summary

By Filip Dorssemont,
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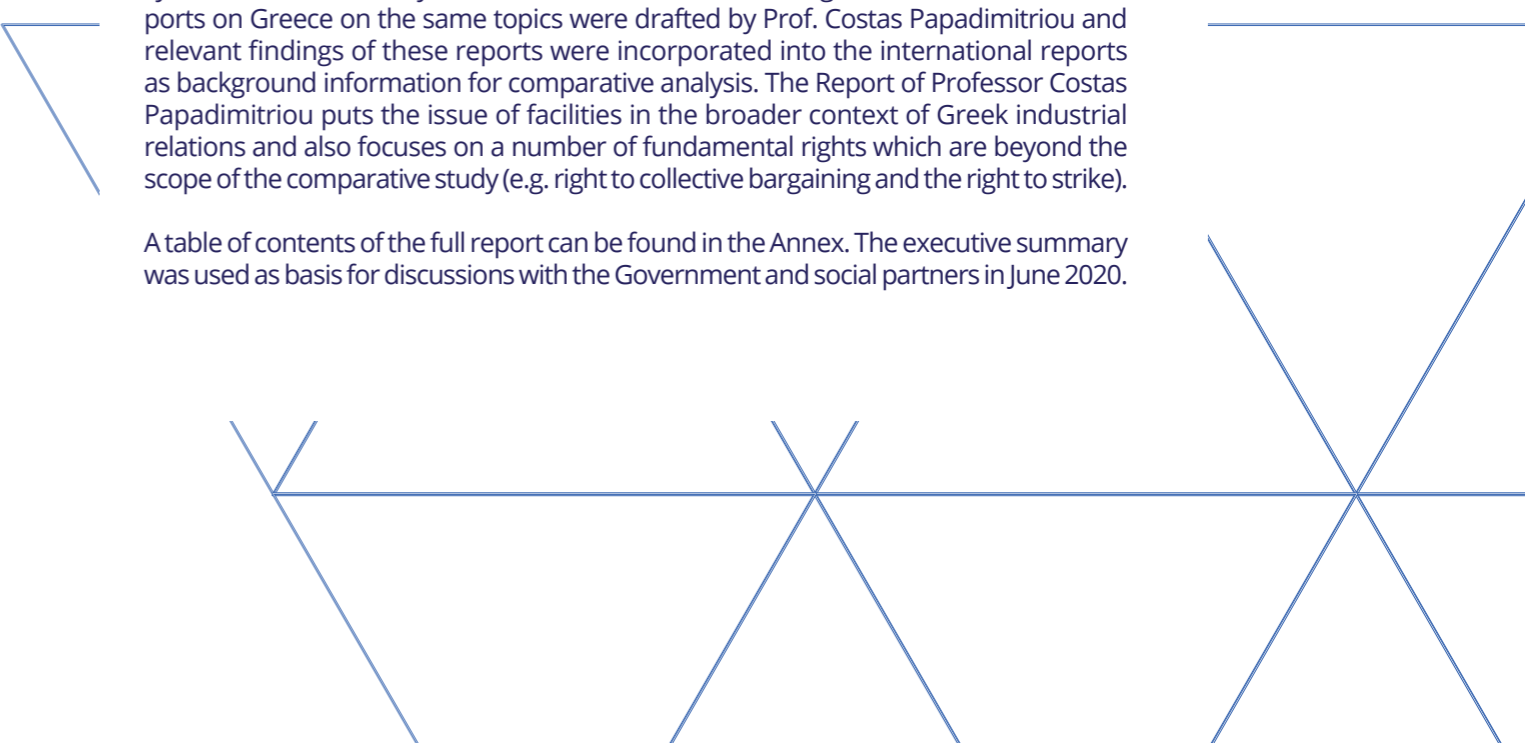
Procedural note

This executive summary reflects the contents of the initial report that was commissioned in the framework of the project, namely “Study on facilities for trade union officials and members to exercise their rights” by Prof Filip Dorssemont. Another unedited initial report on “Comparative review of individual and collective labour dispute settlement systems” was drafted by Dr. Aristeia Koukiadaki. Two background unedited initial reports on Greece on the same topics were drafted by Prof. Costas Papadimitriou and relevant findings of these reports were incorporated into the international reports as background information for comparative analysis. The Report of Professor Costas Papadimitriou puts the issue of facilities in the broader context of Greek industrial relations and also focuses on a number of fundamental rights which are beyond the scope of the comparative study (e.g. right to collective bargaining and the right to strike).

A table of contents of the full report can be found in the Annex. The executive summary was used as basis for discussions with the Government and social partners in June 2020.

Executive Summary
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Procedural note



Introduction

Introduction

This report deals with facilities for trade union officials and members to exercise their functions as workers' representatives. The countries which will be examined are the following: Belgium, Denmark, France, Germany, Italy, Spain and Sweden. The standards of these international and European legal orders have served a twofold purpose: on the one hand they were used as tools to structure the report from a conceptual point of view and on the other hand they served as a benchmark against which labour and trade union rights are granted in the different legal systems of the countries examined.

The report seeks to highlight the common denominator of two main issues which will be analysed: the right to organize, id est the right to form and join organizations of workers or employers and the facilities granted to workers' representatives. The former is of a more fundamental nature (freedom of assembly, non-discrimination and non-interference), whereas the latter (facilities) is more technical.

The freedom of association and the right to organize as a matrix

The freedom of association and the right to organize as a matrix

This section seeks to highlight how the two aforementioned issues of this report are linked to the right to organize, id est the right of workers to form and join workers' organizations of their own choosing and the right of employers to form and join employers' organizations. This right enjoys a fundamental right status in international, European and national labour law. In international and European sources, it has been recognized as a species of a more generic freedom of association.

The recognition of the right to organize will be examined primarily in three distinct legal orders: the ILO [Freedom of Association Convention, 1948 (No. 87), Right to Organize and Collective Bargaining Convention 1949 (No 98)], the Council of Europe (European Convention on Human Rights, The European Social Charter) and the Charter of Fundamental Rights of the European Union.

This section also analyses the extent to which the right to organize has a constitutional status in the seven countries involved.

Neither the above-mentioned international treaties, nor the Constitutions address the issues of facilities granted to trade union representatives or workers' representatives. The issue of facilities emerges in a number of technical ILO conventions and ILO recommendations:

- Workers' Representatives Convention, 1971 (No. 135)¹⁶⁵
- Workers' Representatives Recommendation, 1971 (No. 143)
- Labour Relations (Public Service) Convention, 1978 (No. 151)¹⁶⁶

In the Compilation of the Decisions of the Freedom of Association Committee, published by the International Labour Office, a conceptual link is established between the right to organize and the issue of facilities for workers' representatives.¹⁶⁷ The following issues are listed under the heading of "facilities":

- Trade union meetings
- Collection of dues
- Access to the management
- Access to the workplace
- Use of the undertaking's facilities
- Free time accorded to workers' representatives
- Facilities on plantations.¹⁶⁸

¹⁶⁵ Among the countries under review, this Convention was ratified by Denmark, France, Germany Greece, Italy, Spain, Sweden.

¹⁶⁶ Among the countries under review, this Convention was ratified by Belgium; Denmark, Greece, Italy, Spain, Sweden.

¹⁶⁷ International Labour Office, *Freedom of association. Compilation of decisions of the Freedom of Association Committee*, Geneva, 2018, Paras. 295-300. This publication will be referred to as *COMPILATION (ILO)*, 2018. The compilation is also accessible through an online database: <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:70001:0::NO:::> [accessed 19.5.2020].

¹⁶⁸ This study will however not deal with the specific, sectoral issue of facilities on plantations.

Part I. Freedom of Association and the right to organize

In the general part of the study, three topics will be addressed which are directly linked with the right to organize. They touch upon the core of the right to organise: freedom of assembly, protection against acts of non-discrimination and protection against acts of interference.

The two latter issues will be analysed both from the perspective of European and international law as well as from a comparative point of view.

Freedom of assembly and freedom of association

Freedom of assembly enjoys a special status in the field of industrial relations for a variety of reasons. A number of instruments have proclaimed freedom of assembly and freedom of association within the same provision.¹⁶⁹ As early as 1970, the International Labour Conference adopted a resolution concerning trade union rights and their relation to civil liberties.¹⁷⁰

Freedom of assembly and freedom of association

The Compilation of decisions of the Committee on Freedom of Association clarifies why freedom of assembly is vital for the exercise of the freedom of association. In the Compilation, freedom of assembly is construed as legal foundation for the holding of internal meetings of trade union organizations, federations and confederations as well as ensuring the international dimension of trade unionism and public demonstrations related to the defence of workers' interests.

Provisions combatting anti-union discrimination

Provisions combatting anti-union discrimination exist in all countries under review, irrespective of the size of the enterprise and are not restricted to representatives of workers, but apply to all workers alike. Other good practices relate to an unambiguous reversal of the burden of proof (Belgium, Sweden), which is not enshrined in all legislations concerned. Last but not least, it is essential that employers do not have a choice between compensation and reinstatement, in case of discriminatory dismissal on the basis of trade union membership or involvement in trade union activities. Another important remedy relates to the possibility of a judge to issue an injunction to stop a discriminatory practice. As far as the issue of the prohibition of interference or the independence or autonomy of organizations is concerned, it is clear that this principle needs to be ensured to the benefit of both employers' and workers' organizations. Interference can stem from authorities as well as from workers' or employers' organizations and their members. Due to a certain imbalance of power, it will be much easier for an individual employer to interfere with the functioning of a trade union than it will be for a trade union, let alone individual members to interfere with the functioning of an employers' organization. Thus, all the examples of interference highlighted in Article 2, § 2 of ILO Convention No. 98 relate to interference affecting workers' organizations. By its nature, the prohibition of interference by authorities is not enshrined in statutory law.

Provisions combatting anti-union discrimination

¹⁶⁹ Article 11 ECHR and Article 12 CFREU.

¹⁷⁰ *COMPILATION (ILO)*, 2018, para. 77.

Principle of non-interference

Principle of non-interference

The principle of **mutual** non-interference by organizations is not systematically enshrined in legal orders, except for Denmark and Sweden. In France, Italy and Spain the principle is only enshrined to in favour of trade unions. In Belgium and France, there is no rule formally prohibiting interference. The principle is also applied indirectly since in all countries concerned, mixed bodies of employees and employers are not considered trade unions. Furthermore, autonomy or independence is an essential element for a body to be recognized as a trade union (Germany) or a representative trade union (France). In Belgium and Germany, a trade union which solely exists at the level of one establishment, would not be considered to be a trade union or could not claim to be representative. In France, Italy and Spain there are explicit provisions against management-controlled unions.

Part II: Facilities

Part II: Facilities

The second part examines the issue of facilities both from the perspective of European and international law, and from a comparative point of view.

The ILO has adopted several instruments which deal with facilities attributed to workers' representatives.

There are two generic instruments which list facilities:

The Workers' Representatives Recommendation, 1971 (No. 143)

The Workers' Representatives Convention, 1971 (No. 135)

Reference should also be made to instruments specifically related to the Public Service:

The Labour Relations (Public Service) Convention, 1978 (No. 151)

The Labour Relations (Public Service) Recommendation, 1978 (No.159).

A first issue to be addressed is the notion of workers' representatives. A second issue relates to the impact of facilities offered to these workers' representatives on the functioning of workers' organizations, especially with regard to collective bargaining, which is considered a typical trade union prerogative. The issue of collective bargaining needs to be analysed in the light of the aforementioned ILO Convention No. 98, as well in the light of the more recent Collective Bargaining Convention, 1981 (No.154).

In order to structure these facilities, a classification thereof according to a chronological order from the point of view of a trade union that wishes to "organize" and represent the workers of a given undertaking, is being followed. These facilities can, furthermore, be structured according to a spatio-temporal divide. They are about the conquest of space and time needed for the organization and representation of workers. The distinction between time and space is not absolute.

Thus, a trade union needs to be willing to have the opportunity to contact the workers of an undertaking. At that moment, where -possibly, but not necessarily- no worker in the undertaking is yet affiliated, trade union officials need to be able to contact the workers in the undertaking. Therefore, the first issue to consider is **access to the workplace**.

It is important that the **functioning** of these representatives is facilitated by allowing them to spend **time** during working hours for the exercise of their mandate and to provide them with the **infrastructure** (including space) necessary to exercise their mandate.

Under the **temporal axis**, the following issues can be addressed:

- release (paid or unpaid) to enable workers to exercise their function as workers' representatives
- release to participate in trainings, congresses, sectoral- or national-level social dialogue processes, etc. during working hours outside of the undertaking

Under the **spatial axis**, one can address the following issue:

- provision of office space and/or other facilities (such as computers, locking filing cabinets, access to internal mailboxes, access to emails, access to photocopying free of charge) at the undertaking to union/ workers' representatives.

Under this heading (communication), the following issue can be examined: communication between representatives and the management as well as between representatives and their constituency.

Under the issue of communication between representatives and their constituency, the following issues can be examined:

- trade union meetings at the work premises
- collection of union dues
- usage of notice boards; the right to post and distribute trade union information; the usage of electronic communication tools.

Access to the workplace

The right of trade union officials to enter the workplace to engage in recruitment activities is of great practical importance in undertakings which have no or few unionized members. Some legal orders have not recognized such a right (Belgium, France). Good practices can be found in Spain and Germany, where there is a right either of a statutory nature (Spain) or recognized by a judge (Germany), for trade union officials to visit the workplace. In both cases, it is essential that the employer is duly notified and that the visit does not abnormally disrupt the work organization. The Italian provision presupposes that at least one worker is unionized. In this case, the unionized workers (who are not trade union officials on the payroll of the trade union) can engage in proselitismo sindacale. However, access to the workplace is not just relevant for recruitment, but also for enforcement of collective agreements and labour law in general. Although the Greek legal order does not seem to explicitly enshrine access of trade union officials to the workplace for recruitment purposes, however, it gives these trade union officials the right to be present during inspections carried out by the Labour Inspectorate. In the same vein, in Denmark trade unions have access to the workplace to monitor whether working conditions enshrined in a collective agreement are respected.

Right to time-off for workers' representatives

A comparison between the various countries with regard to the right to time-off (*id est: working time*) recognized to workers' representatives *sensu lato* is a complicated endeavour. The notion of workers' representatives can cover genuine union delegates, *id est* workers of the company designated by the union or elected among its unionized members working in an undertaking, and elected workers' representatives who may have no ties with the trade union movement. There are cases with dual channels where both types exist and single channel where only one type exists.

Leaves of absence can relate to time spent during meetings for the exercise of a mandate in the area of workers' representation, to the issue of the internal trade union operations, to the preparation of these meetings and to training. Leaves can be granted paid or unpaid. Another issue relates to the costs of the exercise of such a mandate especially the cost of training. Thus, the question arises whether it has to be borne by the employer or not.

Part II: Facilities

Access to the workplace

Right to time-off for workers' representatives

**Right to time-off
for workers'
representatives**

All these issues tend to be treated differently in the countries concerned. These differences relate to the structure of the representation (single or dual) and to the emphasis placed in dual systems on the trade union related representatives or the elected representatives. Various countries take into account the size of the enterprise. The latter has an impact on the number of representatives and on the length of the releases granted (see especially France, Germany, Italy, Spain). The involvement of workers, in the firm, as trade union officials, has the advantage that trade unions will remain in touch with their constituencies.

Infrastructure for workers' representatives**Infrastructure
for workers'
representatives**

For the proper functioning of workers' representatives, a minimum of infrastructure is key. All legal orders contain an abstract principle that facilities need to be adequate. They do not go in minute detail about the extent of these facilities. The question arises whether a proper understanding of subsidiarity does not require that the precise extent of the facilities to be exercised at the level of the undertaking is best regulated at plant level in view of the specific situation of the undertaking. Therefore, collective regulations at plant level seem more appropriate than statutory rules to provide such details. It is essential to provide meeting rooms if worker representatives are part of a body of representatives (union delegations composed of delegates or works councils). In the case of mixed works councils, it is practically unthinkable that an employer presiding over a meeting would not arrange for a meeting room. Another issue is the availability of offices other than meeting rooms, which are necessary for workers' representatives getting structural dispensations to exercise their mandate, which cannot be restricted just to the participation in meetings. The need for offices will in practice differ according to the size of the enterprise, as these dispensations depend upon the threshold of the workforce. In those countries where regulations provide for the holding of assemblies with the constituency, a meeting point is also essential. Another element of infrastructure, *id est* notice boards, will be dealt with under the *rubrica* dedicated to communication.

Communication**Communication**

Communication between management and representatives will naturally take place within mixed bodies (works councils presided over by the employer in Belgium, Denmark, France or Safety Committees in Sweden and Belgium). In countries where works councils are not "mixed bodies", statutory provisions may put forward such a communication, *id est* a duty for an employer to meet the works council in a more explicit way (Germany).

Communication between representatives and their constituency is a less obvious issue. It requires use of the employer's space or working time. In many legal orders there is emphasis on the principle that this communication needs to take place after prior notification of the employer and outside working hours to minimize the burden. In several legal orders, trade unions (Italy, Spain) or the works council (Germany) have the right to organize a so-called assembly of the workers at the premises of the workplace. Another instrument might be the right of representatives to contact individual workers by meeting them during their release (credit hours, cf. France) or the right of the works council to organize "office hours" (*Sprechstunden*) (Germany). Another means of communication might relate to written communication on a board (France, Belgium, Italy). Some legal orders allow for the collection of dues at the premises of the undertaking by trade unions (Italy, France, Spain).

The standards of these international and European legal orders have served a twofold purpose: on the one hand, they were used as tools to structure the report from a conceptual point of view and on the other, they served as a benchmark against which labour and trade union rights granted in the different legal systems of the countries were examined.

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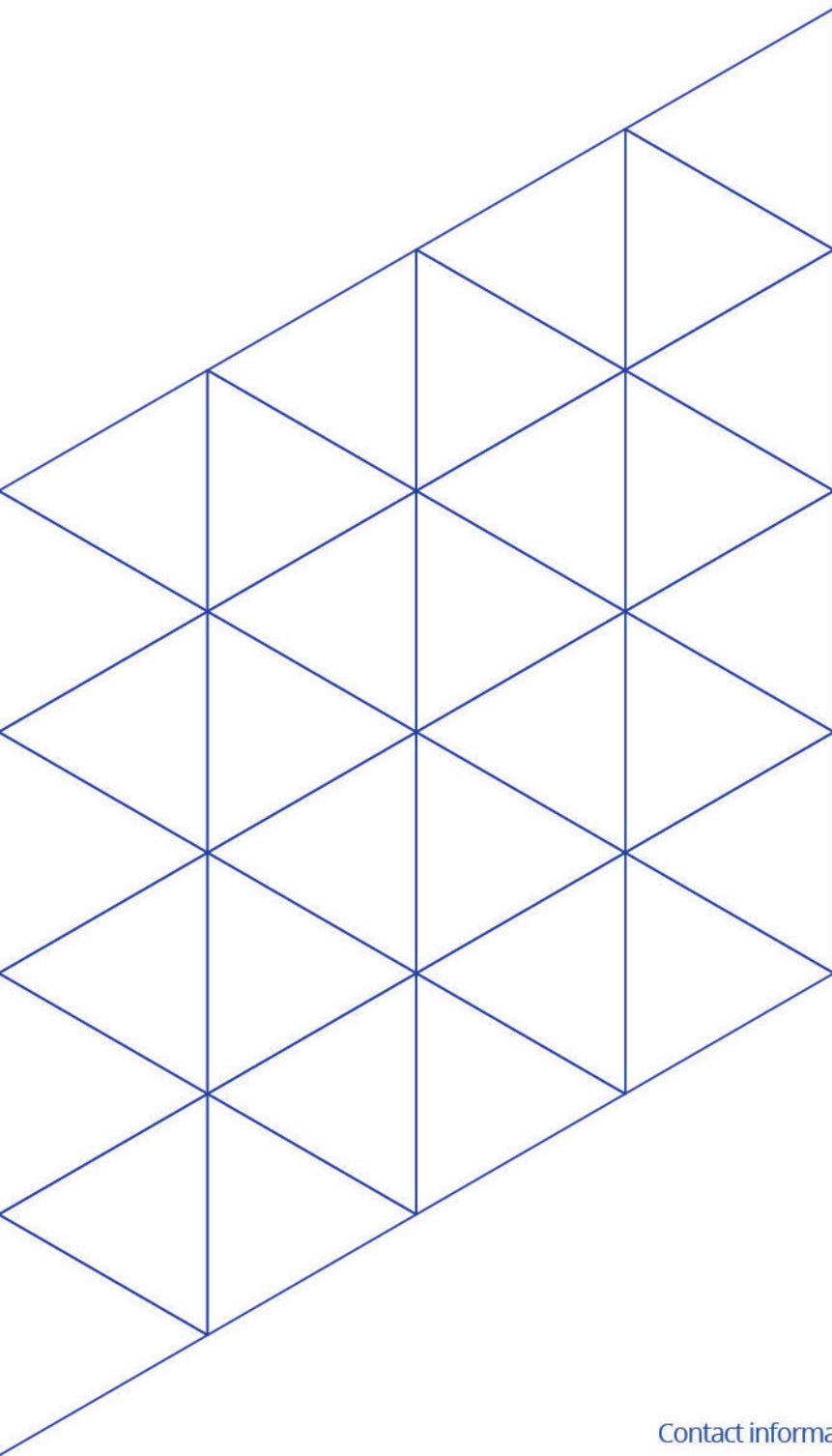
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Project
funded by the
EUROPEAN UNION



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Labour
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