

DIRECTORATE-GENERAL FOR INTERNAL POLICIES

POLICY DEPARTMENT **C**

CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS



Constitutional Affairs

Justice, Freedom and Security

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Petitions

The impact of the crisis on fundamental rights across Member States of the EU

Comparative Analysis

STUDY FOR THE LIBE COMMITTEE





DIRECTORATE GENERAL FOR INTERNAL POLICIES

**POLICY DEPARTMENT C: CITIZENS' RIGHTS AND
CONSTITUTIONAL AFFAIRS**

CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS

The impact of the crisis on fundamental rights across Member States of the EU Comparative analysis

STUDY

Abstract

Upon request by the LIBE Committee, this study presents a synthesis of studies conducted in seven Member States regarding the impact of financial and economic crises, and austerity measures imposed in response thereto, on fundamental rights of individuals. The Member States studied are: Belgium, Cyprus, Greece, Ireland, Italy, Spain and Portugal. The impact of measures is examined in relation to the rights to: education, healthcare, work, pension, access to justice, as well as freedom of expression and assembly in all seven Member States, while a number of State-specific rights are also looked into, such as the right to housing, right to property or some rights at work. In addition, an overview is made of the mechanisms available for monitoring compliance with international human rights obligations. In view of the impacts recorded, recommendations are made for EU action to ensure respect for fundamental rights in times of austerity. The seven country studies are made available separately.

**DOCUMENT REQUESTED BY THE
COMMITTEE ON CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS**

AUTHOR

Aleksandra Ivanković Tamamović, Milieu Ltd., (Belgium).

112 Chaussée de Charleroi, B-1060, Brussels, tel: +32 2 514 3601; Fax +32 2 514 3603;

Project Manager: Aleksandra Ivankovic Tamamovic, e-mail: aleksandra.ivankovic@milieu.be; web address: <http://www.milieu.be/>;

Project Director: Emma Psaila, e-mail: emma.psaila@milieu.be

Milieu would like to thank Mary Dowell-Jones and Bart Vanhercke, senior experts, for their generous advice, support and guidance in the creation of the present study.

RESPONSIBLE ADMINISTRATORS

Roberta Panizza

Sarah Sy

Policy Department C: Citizens' Rights and Constitutional Affairs

European Parliament

B-1047 Brussels

E-mail: poldep-citizens@europarl.europa.eu

LINGUISTIC VERSIONS

Original: EN

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Policy Departments provide in-house and external expertise to support EP committees and other parliamentary bodies in shaping legislation and exercising democratic scrutiny.

To contact the Policy Department or to subscribe to its monthly newsletter please write to:

poldep-citizens@ep.europa.eu

European Parliament, manuscript completed in February 2015. Given the continuously changing situation in the Member States under examination, the cut-off date for the data collection was set for 30 June 2014.

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This document is available on the Internet at:

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LIST OF ABBREVIATIONS

- CADE** Convention against Discrimination in Education
- CEACR** Committee of Experts on the Application of Conventions and Recommendations
- CEB** United Nations Chief Executive Board for Coordination
- CEDAW** Convention on the Elimination of All forms of Discrimination against Women
- CEPEJ** European Commission for the Efficiency of Justice
- CESCR** UN Committee on Economic Social and Cultural Rights
Committee
- CJEU** Court of Justice of the European Union
- CoE** Council of Europe
- CoE** Council of Europe Commissioner for Human Rights
Commissioner
- CRC** Convention on the Rights of the Child
- CRC** Committee on the Rights of the Child
Committee
- CRPD** Convention on the Rights of Persons with Disabilities
- CSRs** Country Specific Recommendations
- ECB** European Central Bank
- ECHR** European Convention on Human Rights
- ECON** Economic and Monetary Affairs Committee of the European Parliament
- ECSR** European Committee on Social Rights
- ECtHR** European Court of Human Rights
- EFC** European Foundation Centre

EFSM	European Financial Stabilisation Mechanism
EJTN	European Judicial Training Network
EPHA	European Public Health Alliance
EPSU	European Federation of Public Service Unions
ERT	Hellenic Broadcasting Corporation/Greek Radio-Television (Ελληνική Ραδιοφωνία-Τηλεόραση – ΕΡΤ)
ESC	European Social Charter
ESM Treaty	Treaty establishing the European Stability Mechanism
ETUC	European Trade Union Confederation
ETUI	European Trade Union Institute
EU	European Union
EU Charter	Charter of Fundamental Rights of the European Union
Eurofund	European Foundation for the Improvement of Working and Living Conditions
FEMM	Women’s Rights and Gender Equality Committee of the European Parliament
FRA	European Union Agency for Fundamental Rights
G20	The Group of 20
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organization
IMF	International Monetary Fund
LIBE	Civil Liberties, Justice and Home Affairs Committee of the European Parliament
MdM	Médecins du Monde

MoUs	Memoranda of Understanding
NGOs	Non-governmental organisations
NHS	National Health System
OECD	Organisation for Economic Co-operation and Development
OHCHR	Office of the United Nations High Commissioner for Human Rights
PACE	Parliamentary Assembly of the Council of Europe
PETI	Petitions Committee of the European Parliament
RESC	Revised European Social Charter
SMEs	Small and medium enterprises
TEU	Treaty on European Union
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNHRC	United Nations Human Rights Council
UNGA	United Nations General Assembly
UN SG	United Nations Secretary General
WHO	World Health Organization

EXECUTIVE SUMMARY

Having spread from the US to Europe, the financial and economic crisis has greatly affected economies globally. In a chain reaction, the crisis spread from one country to another, affecting first, the housing and financial sector and then entire economies – in almost every sector of life. The mainstream response to failing economies was cuts in spending and savings in budgets. With areas such as pensions, healthcare and education, which were eating up to 70% of GDP in some countries, these areas were the first ones to be affected by emerging politics of austerity.

Some impact of crisis and the ensuing austerity measures were visible immediately or quite soon after their introduction. Some impacts will be seen only after decades have passed. Notably, however, the international and the European watchdog institutions have been swift to respond to the threats of austerity to the enjoyment of fundamental rights.

At the international level, within the framework of the **United Nations**, many reactions and initiatives have been noted by the Secretary General, the General Assembly, Office of the High Commissioner for Human Rights, as well as many of the treaty bodies, notably, the Committee on the Elimination of All forms of Discrimination against Women, the Committee on Economic, Social and Cultural Rights and the Committee on the Rights of the Child. A number of special UN procedures have also responded to the emerging impacts of the crisis on rights, within each of their respective mandates. Furthermore, the International Labour Organisation, the Organisation of Economic Co-operation and Development as well as the Group of 20 and civil society, have all responded to the concerns that austerity has started to raise globally.

At the **European level**, the Council of Europe and the European Union have taken up their traditional roles and made sure that they were raising concerns whenever necessary, while acting within their respective competencies.

Within the **Council of Europe** framework, the Parliamentary Assembly, the Committee of Ministers, the European Committee for Social Rights, the European Court of Human Rights, the European Commission for the Efficiency of Justice and the Human Rights Commissioner, have all taken up their assigned roles. The European Committee for Social Rights has observed a number of collective complaints submitted in response to the crisis, while the European Commission for the Efficiency of Justice carefully monitors any changes in the standards of access to justice due to budget cuts. The Human Rights Commissioner has probably played the most active role in monitoring human rights violations in crisis-affected countries. Through his country visits, follow up reports, and the recent paper on the impact of crisis on fundamental rights, the Commissioner remains at the forefront of the defence of rights against austerity.

Within the **EU framework**, the European Parliament continues to play an important role in the promotion and protection of fundamental rights and, in particular, with respect to the impacts of economic crisis on those rights, through the work of the LIBE, PETI, FEMM, EMPL, AFET and ECON committees. The European Commission also plays a significant role, while the EU Fundamental Rights Agency and the European Institute for Gender Equality continue to observe, within their respective mandates, the impact of the crisis on fundamental rights.

Civil society has made a significant contribution to the discussion of issues and has put forward proposals for policies.

Selection of countries and rights

The **purpose of the present study** is to identify the overall impacts of the crisis on fundamental rights of EU citizens. However, since the crisis did not affect all of the Member States with the same intensity, the situation in seven Member States was observed: **Belgium, Cyprus, Greece, Ireland, Italy, Spain and Portugal**. The selection of countries aimed to give a representative picture of the overall situation in the EU, covering both common and continental law systems, and a mix of Member States participating, and not participating, in borrowing arrangements with the Troika.

Taking into consideration the nature of the crisis, and the responses thereto, it appeared that economic and social rights were more affected than other rights – the **right to education, healthcare, work and pension** being among the most affected. Furthermore, given its overarching importance for full and effective enjoyment of any other right, the effects of the crisis on the right of **access to justice** were also explored. The crisis has instigated a number of public responses, by means of protests and other gatherings. These protests have, on several occasions, become violent – provoking strong police involvement. Laws were adopted to define **freedom of expression and assembly**, thus putting additional limits thereto. Hence, the study also seeks to identify the impacts of the crisis on these rights. The aforementioned rights were, to a greater or lesser extent, affected in all seven observed Member States.

In each of the Member States, the crisis and austerity measures have also had an impact on other rights. In recognition of this, the study gives an overview of the rights specifically affected in certain Member States. Hence, the study looks into the: **right to housing** in Belgium, Cyprus, Ireland and Spain; **right to property** in Cyprus, Greece and Italy; **rights at work** in Cyprus, Greece and Portugal; **freedom of information** in Greece; **right to social security** in Ireland and Portugal; the **right to water** in Ireland. Some specific issues in relation to non-discrimination are also explored, namely, the restriction of **rights of foreigners** in Belgium and **hate crimes and hate speech** in Greece.

Finally, the study looks at how certain groups of people were disproportionately affected in the enjoyment of their rights, thus jeopardising the **principle of equality**.

Right to education

The study analyses the impact of the crisis on the right to **compulsory education**, which is guaranteed in all of the observed Member States. Out of the seven observed Member States, only Belgium has not undertaken any significant interventions with respect to the right to education. The main measures included: a reduction in the number of schools, which was achieved by mergers or closures; a reduction in the number of teachers; an increase in the student-to-teacher ratio; the reduction of administrative and other school-related costs. Some measures resulted in reducing the services provided to **children in vulnerable situations**, such as children with disabilities, Roma children and children of migrants.

The impacts of measures cannot yet be fully evaluated, but include a danger to the overall quality of education and children's **success at school**; **an increase in unemployed workers in education**; reduced availability of services such as transport to school; deterioration of

general conditions in classrooms, such as cleaning and heating. Children with disabilities, Roma, Travellers' children, as well as children of migrants, appear to have been disproportionately affected by the measures imposed.

Right to healthcare

All of the observed Member States introduced measures affecting access to healthcare. However, Belgium was the only Member State which introduced only measures to alleviate hardships, without any of the interventions removing services. In Greece and Cyprus, **massive reforms to the healthcare systems** were expected, whereas, in other countries, e.g. Portugal, the interventions were only aimed at parts of the system. Other measures were directed towards: restricting access to healthcare; introducing or increasing participation fees; reorganisation of hospitals and healthcare providers; reducing salaries and freezing the employment of staff; interventions into the costs of drugs and other services; administrative reforms. In some Member States, a few measures were introduced to alleviate the burden of the newly-introduced restrictions.

The impacts of measures were seen in: reduced access to healthcare; additional financial burden for citizens; reduction in the number of medical staff and facilities; increases waiting times for appointments and surgeries; alternatives to public health care, e.g. private services or NGO-run services; increased **unmet medical needs**; decreased **preventive and protective care**; changes in the **pharmaceuticals market** – including shortages in supplies and decreased prices. Poor and homeless people, older people, people with disabilities and their families, women, and undocumented migrants, are among the groups which were **disproportionately affected** by the measures imposed.

Right to work

The study focuses on the impact of the crisis on the right to work, understood as the **right to engage and remain in employment under fair conditions**. All of the seven observed Member States have made interventions into the right to work. While many measures were aimed at facilitating the dismissal of employees in times of economic downturn, many were also aimed towards alleviating the effects of the negative trends in the labour market. The main measures introducing limitations to the exercise of the right to work, were those related to increased job losses, wage decreases, increased working hours, facilitation of the use of temporary and part-time employees, imposition of involuntary mobility and decreased unemployment protection.

Some measures were implicitly aimed more towards women than men – while there were some explicit measures affecting the employment conditions of migrants. The alleviation **measures mostly concern: workers' empowerment; facilitating job placements; introducing tax and other forms of financial relief on the cost of employment; encouraging traineeships, professional training and self-employment; facilitating transition from part-time and temporary contracts to full-time permanent employment.**

Some measures, e.g. the freeze of public service recruitment, led to direct **job losses**. Other measures led to a **decline in wages** whilst working conditions and **job security** appear to be threatened, and to an increase in the number of economically-dependent self-employed workers. The measures appear to have **disproportionately affected** a number of groups including: women, young workers, people with disabilities, migrants, Travellers, low-paid workers, retired and single people.

Right to a pension

The study examines the right to a pension – understood to be an acquired right and protected under the general rules applicable to the protection of property rights. Pension systems were already subject to revision before, and independently of, the crisis. However, the crisis also influenced, to a significant extent, the creation of new policies. All of the seven observed Member States have made interventions into the right to pension. The reforms appear to have been the most overwhelming in Greece. In Greece, Ireland and Portugal, **systemic changes** were introduced, reforming the functioning of the pension system. In addition, other measures were introduced, including those related to pension age and the seniority requirement; the calculation and revaluation of pensions; cuts in the amounts of pensions already awarded; rules applicable to work after retirement.

Pensioners can be seen as a vulnerable group. However, some pensioners are more vulnerable than others, and they have been subject to specific measures, e.g. measures introducing the new scheme of a guaranteed minimum income in Cyprus, and new rules introduced in relation to the pensions of parents of children with disabilities.

The alleviation measures mostly concern the encouragement of workers to stay longer in the workforce. In Ireland, an obligation was adopted for private employers to introduce a pension scheme for employees, whilst in Greece, people with disabilities were spared from cuts in their pensions. In most Member States, people employed in arduous work are either implicitly, or explicitly, provided with preferential conditions for pensions, and those preferences have not been removed with austerity measures.

The impacts of austerity measures on the right to a pension may be seen in **decreased State expenditure on pensions and decreased standard of life** for many pensioners currently, and for future pensioners. Specific impacts were identified in Greece, where numerous and frequent changes have brought legal certainty into question. At the same time, the administrative proceedings for a pension request are lengthy, leaving people without an income for up to two years. Other measures have **disproportionately affected repatriated elderly people**, low-income workers and women. One particular measure adopted in Greece, has affected the right to pension entitlement of parents of children with disabilities, i.e. the conditions for retirement were changed with retroactive effect, causing parents of children with disabilities, who had left employment expecting to be allocated a pension, to retroactively lose their pension claims.

Right of access to justice

Access to justice is not just a right in itself but also an **enabling and empowering right** – allowing individuals to enforce their rights and obtain redress.

The justice systems of the EU Member States were subject to revision before, and independently of, the crisis. The crisis, however, also influenced, to a significant extent, the creation of new policies. All of the seven observed Member States have made interventions into the right of access to justice. The measures mostly concern the: number of courts and judicial staff; rules applicable to access to legal aid; procedural rules for access to legal remedies and costs of proceedings.

The measures taken in alleviation mostly concern the reduction of workloads: by establishing new judicial structures; reducing the costs of proceedings; promoting alternative dispute resolution mechanisms; protecting vulnerable groups.

The impacts of austerity measures on the right of access to justice are not necessarily limited to measures imposed within the justice system, but may also be conditioned by measures introduced in relation to other rights. Those impacts are mostly seen in the **increase of court workloads** in Greece and Ireland. The impacts of measures aimed at the justice system were identified in the following areas: access to legal remedy; legal aid; costs of proceedings; effectiveness of judicial protection. No measures were identified which would have disproportionately affected vulnerable groups.

Freedom of expression and assembly

Rights to freedom of expression and assembly, for the purposes of this study, are observed jointly in the context of protests taking place in the observed Member States since the beginning of the crisis. While some protests have been more general, with participants expressing their dissent and dissatisfaction with austerity measures, other protests were **more 'thematic' and have been targeted to draw attention to specific measures**. Most of the protests and demonstrations were peaceful and dignified – only exceptionally, with incidents being recorded. Nonetheless, there have been instances in which serious allegations of police violence were reported. Moreover, on several occasions the protesters resorted to vandalism and, on one occasion, caused casualties.

Protests have sometimes provoked measures that, in turn, have provoked more protests and **further reactions**. On the one hand, **grassroots movements** have surfaced as an important democratic power that may take upon itself to bring-to-life immediate democracy, initiate social dialogue and foster solidarity between citizens and law enforcement bodies.

On the other hand, protests have caused some limiting consequences, e.g. prohibiting or limiting protests regarding restrictions on freedom of expression and assembly. Furthermore, in response to recorded incidents, some Governments are introducing **further restrictions to these freedoms**, by means of highly-disputed legislation.

Other rights

Besides the rights which were examined across the Member States, several other rights have been affected to a greater or a lesser extent, but not necessarily in all the Member States observed. The interferences with the following rights were observed:

- **right to housing** was affected in Belgium, Cyprus, Ireland and Spain in two principal ways: with the increase of foreclosures and evictions and by the interventions into the allocation of social housing and rental allowances.
- **right to property** was affected in Greece through massive increases in taxation and interventions in trade with State bonds. Property rights in Cyprus were affected by seizure of bank deposits exceeding EUR 100,000 – the so-called **'deposit haircuts'**. In Italy, it is argued that the right to property was affected by the failure of the State to pay on time the claims from private entities with public contracts.
- **rights at work** have been affected in a number of Member States. Hence, the right to collective bargaining was interfered with in Cyprus, Greece, Ireland and Portugal – mostly by limiting the bargaining power of workers. In Portugal, the right to holidays has been brought into question.

- **freedom of information**, in Greece, i.e. more precisely, the freedom of the press, has been put into question, particularly after the closure of the national broadcaster.
- **right to social security** was interfered with in Ireland and Portugal – mostly by interventions into the system of social benefits, which needed to be cut as a matter of austerity.
- **right to water** has been raised in Ireland, given that one of the measures introduced was water metering, as of 1 January 2015.
- **prohibition of discrimination** was raised at two separate instances: within the context of hate speech in Greece and through restrictions of the human rights of foreigners in Belgium.

Besides these particular instances, an evaluation of the overall impact of all the measures analysed in the study is made, given that many measures analysed in the present study have raised issues of their impact on vulnerable groups of people.

International and EU mechanisms for monitoring the respect for human rights

Monitoring mechanisms and their proper functioning are of key importance to the rule of law at both national level and international level. Many institutions have reflected on the various impacts of austerity measures, including the UN Independent expert on the effects of foreign debt and related international financial obligations of Member States on the full enjoyment of all human rights, particularly economic, social and cultural rights; the CRC and CEDAW Committees; the CoE Committee of Ministers; the ECSR; the CoE Commissioner; the CJEU.

In many instances, the monitoring mechanisms found **interferences** and **non-compliance**, of various measures introduced within the framework of austerity, with the requirements of international human rights law or EU law.

Proposals for improvement of the respect for fundamental rights in times of economic crisis

The findings and recommendations are based on the analysis of the national studies, research and stakeholder interviews. They address issues identified both at EU level and Member State level.

Apart from a few general recommendations, which should be applicable in the context of austerity and its impact on fundamental rights, a number of other recommendations are made in respect of each right observed by the study, across the Member States concerned.

General recommendations are aimed at ensuring that spending cuts are based on a detailed evaluation of effectiveness, efficiency, relevance and added value of public expenditure, while the European Parliament is invited to continue insisting on the establishment of clear, transparent and binding rules of procedure for the interaction between the institutions within the Troika.

In the field of the **right to education**, the quality of education needs to be ensured. Particular attention should be paid to the education of children in vulnerable situations, while measures must not interfere with equal access to education for all children. Inclusive

education needs to be ensured without exception. The European Parliament may continue supporting social aspects of education, providing that Troika actions are weighed against goals of the European Semester.

The **right to healthcare** needs to be ensured in view of the pledge towards universal health coverage. Healthcare needs to be available, accessible, acceptable, and of good quality. Reforms need to be quantitative and qualitative, while health protection of vulnerable groups needs to be particularly safeguarded. The European Parliament is invited to continue dialogue with the European Commission on the issue of universal health coverage, and to support initiatives, such as Horizon 2020, to be directed towards this goal.

With respect to the **right to work**, attention should be paid to making flexicurity more labour-friendly, ensuring that the minimum wage is adequate and liveable, and that interventions into the right to work are co-ordinated with measures in the field of education. It is recommended that the European Parliament ensures systematic observance of social dialogue and encourages investment in human capital.

Regarding the **right to a pension**, it needs to be ensured that the standard of living of pensioners is maintained and that there is legal certainty on pension entitlements. Pensioners should not be obstructed from remaining active in the workforce. The European Parliament should ensure the promotion of active ageing, e.g. by proposing concrete measures to be taken for people of retirement age to remain economically active.

Access to justice needs to be affordable with legal aid provided if necessary, and any judicial reform needs to ensure adequate and effective access to justice for all. The European Parliament needs to ensure that the requirements of the rule of law are put in place through proper access to justice, and to continue its legislative work on the Commission's proposal on provisional legal aid.

Freedom of expression should not be unnecessarily limited, and **freedom of assembly** needs to be guaranteed without unnecessary and disproportionate use of force. The European Parliament needs to keep reminding Member States about their international obligations towards ensuring these freedoms.

The ECtHR needs to be ratified by the EU, while all international human rights instruments need to be complied with when adopting austerity measures. National protection mechanisms need to be empowered to deal with fundamental rights violations at national level. The European Parliament needs to ensure supervision over Troika performance, while the EU Ombudsman may also play an important role in the evaluation of the EU participation in the Troika.

1. INTRODUCTION

Whether endorsed by its supporters or rejected by its critics¹, it can hardly be contested that globalisation played a major part in the global spread of the financial crisis, which even though started in the United States (US), was a consequence of the pre-existing conditions in the banking and housing sectors in both the US and Europe. Due to the synergy of markets, once it started, the crisis quickly spread over to Europe. Since 2007 there has been intense pressure on banks, on both sides of the Atlantic, to raise capital levels, but this proved to be more difficult for European banks². When the banks started seeking bail-outs, the Greek economy came under additional pressure and Greece was the first country to be significantly affected by the crisis. This then continued to spread across the Eurozone and non-Eurozone alike, affecting – to **a larger or a lesser extent, every country's economy**, even the proclaimed self-sufficient economy of North Korea³.

The overall impacts of the crisis depended on the individual situation of every country before the crisis⁴. Thus, in some European countries, these impacts appeared to be, and continue to be, overwhelming. Prior to the crisis, there were serious global imbalances which led to the crisis and caused liquidity glut, which fuelled the global asset bubble. However, the crisis influenced economies by affecting growth, labour markets and employment, budgetary positions, and furthering the existing imbalances⁵. When growth stopped, economies entered into recession. Depending on the particular circumstances characteristic of each Member State, the recession generally lasted for six consecutive years, with some Member States recording growth as episodic and just above stagnation⁶.

In 2006 in Belgium and Italy, for example, the national debt was at 91%⁷ and 106%⁸ of GDP, respectively, and such bad situations were only made worse by the crisis. The imbalance needed to be managed and the Member States were required to take action. Against the background of regulatory weaknesses of the financial market, the virtues of the free-regulating market system were brought into question and the wisdom of State intervention was put forward⁹. However, the need to respond to crisis was seen as an opportunity to reform less effective structures and explore new solutions¹⁰.

¹ For a discussion on the positive and negative aspects of globalisation, see e.g. Mourdoukoutas P., 'The Good, the Bad and the Ugly Side of Globalisation', Forbes, October 2010, available at: <http://www.forbes.com/sites/panosmourdoukoutas/2011/09/10/the-good-the-bad-and-the-ugly-side-of-globalization/>.

² Schildback J. and Wenzel C., 'Bank performance in the US and Europe, An ocean apart', Deutsche Bank, DB Research, September 2013, available at: https://www.dbresearch.com/PROD/DBR_INTERNET_EN-PROD/PROD0000000000320825.pdf.

³ Lee H-H, 'Impact of Global Economic Crisis on North Korea', SERI Quarterly, July 2009, pp. 115-119, available at: http://www.seriworld.org/16/qt_PdfDown.html?mncd=0301&pub=20090305&seq=81.

⁴ Thus, for example, in the case of Greece, the crisis and global slowdown revealed problems that had been simmering beneath the surface for some time.

⁵ European Commission, Directorate-General for Economic and Financial Affairs, 'Economic Crisis in Europe: Causes, Consequences and Responses', European Economy 7, 2009, available at: http://ec.europa.eu/economy_finance/publications/publication15887_en.pdf.

⁶ Thus, in the period from 2008 to 2013, Greece has been recording negative growth in (-0.2, -3.1, -4.9, -7.1, -7.0, -3.9), while since 2009 Spain recorded growth only in 2011, and only by 0.1% (-3.8, -0.2, 0.1, -1.6, -1.2). The World Bank Data, 'GDP growth', available at: <http://data.worldbank.org/indicator/NY.GDP.MKTP.KD.ZG>.

⁷ Trading Economics, 'Belgium Government Debt to GDP 1980-2014', available at: <http://www.tradingeconomics.com/belgium/government-debt-to-gdp>.

⁸ Trading Economics, 'Italy Government Debt to GDP, 1988-2014', available at: <http://www.tradingeconomics.com/italy/government-debt-to-gdp>.

⁹ Aikins K.A., 'Global Financial Crisis and Government Intervention: A Case for Effective Regulatory Governance', International Public Management Review, Volume 10, Issue 2, 2009, p. 23, available at: <http://journals.sfu.ca/ipmr/index.php/ipmr/article/download/67/67>.

¹⁰ EU Agency for Fundamental Rights, 'Justice in austerity – challenges and opportunities for access to justice', 2012, available at: <http://fra.europa.eu/en/node/4980>.

Understanding that the intervention was necessary, countries affected by the emerging crisis have tried responding to it by introducing various sets of self-imposed measures, trying to bail-in¹¹ the impact of the crisis on economy. However, in certain countries, the scope of the crisis was such that those self-imposed measures have proven not to have been enough, and assistance needed to be sought from the outside, thus resorting to bailing-out. Nevertheless, both bail-in and bail-out came at a price – public spending needed to be reduced. From necessity, austerity measures have, thus, become reality.

Because of the growth in the welfare state over the preceding two decades, the socially-focused areas now account for more than half of the general Government spending¹², while the EU accounted for around **40% of the world's public social protection expenditure**¹³. Hence, when deciding where to cut in public expenditure, sectors such as pensions, healthcare and education, were seen as the most likely candidates for reductions. A viable spending reduction plan could therefore not exclude those expenditures, particularly once the need to plan for an ageing population was taken into account¹⁴. Against this background, certain interventions have been easy to identify and were relatively easy to justify, if not actually welcome, at least in some countries. At the same time, however, strong international and national safeguards for those rights were already in place at the time of interventions, and the measures imposed needed to be carefully designed not to interfere with the recognised fundamental rights of the individuals affected.

1.1. Responding to crisis by austerity

The housing bubble started growing in the US, and then also globally, in the 1990s, and by the time it started bursting in 2006, it made house prices rise out-of-line with fundamentals, such as household incomes. In the meantime, however, the bubble expanded to Europe. The fact that the financial institutions were lending to subprime borrowers, together with commercial property lending practices, and general credit and financial assets in general, helped to create and inflate the bubble. New kinds of financial innovations masked the risks, and regulators failed to restrain excessive risk taking. About the time the financiers claimed to have found a way to banish risk, they had actually, and simply, lost track of it¹⁵. Growth, during the boom cycle, was prolonged by interest rates that were maintained at too low a level, with global liquidity conditions which were **extremely loose, which all led to a 'hunt for yield' among investors**¹⁶ – depressing investment returns and funnelling money into subprime and other credit derivatives.

¹¹ The 'bail-in' concept, or the idea of having depositors, rather than taxpayers finance the bailout, was suggested by the Troika lenders and embraced by the new Government amidst heated protests.

¹² In 2011 more than half of the Government spending was devoted to the functions of 'social protection' and 'health', which accounted for 19.6 % and 7.3 % respectively of GDP. The other functions also comprising a large share of Government expenditure are 'general public services' (6.6 % of GDP), 'education' (5.3 % of GDP) and 'economic affairs' (4.0 % of GDP). Eurostat, 'General Government expenditure in 2011 – Focus on the functions 'social protection' and 'health'', Statistics in Focus, September 2013, available at: <http://ec.europa.eu/eurostat/documents/3433488/5585816/KS-SF-13-009-EN.PDF/259dd0ba-7baf-4b7a-89ec-3cc19b00f573?version=1.0>.

¹³ Bontout O. and Lokajickova T., 'Social protection budgets in the crisis in the EU', Social Europe I, May 2013, p. 7, available at: <http://ec.europa.eu/social/BlobServlet?docId=10224&langId=en>.

¹⁴ See e.g. European Commission, 'The 2012 Ageing Report' – Economic and budgetary projections for the 27 EU Member States (2010-2060)', European Economy 2, 2012, available at: http://ec.europa.eu/economy_finance/publications/european_economy/2012/pdf/ee-2012-2_en.pdf.

¹⁵ The Economist, 'Crash Course', September 2013, available at: <http://www.economist.com/news/schoolsbrief/21584534-effects-financial-crisis-are-still-being-felt-five-years-article>.

¹⁶ On risks of the hunt for yield, see e.g. European Central Bank, 'Financial Stability Review shows progress in strengthening banks and sovereigns; hung for yield contributing to the build-up of new risks', Press Release, May 2014, available at: <http://www.ecb.europa.eu/press/pr/date/2014/html/pr140528.en.html>, or Foley S., 'Hunt for

Unsound management practices, notably in banks and non-bank financial institutions, became widespread, and financial incentives for their employees were set too high. Complex financial instruments were developed which lacked transparency, and risk management systems failed to operate effectively. Greed was rewarded through excessively-generous remuneration systems which often continued even as the financial institutions made huge losses¹⁷. This led to the bubble bursting in 2006, in the US¹⁸. Flawed national policies, coupled with flawed institutions and institutional arrangements at both the national level and international level, were initiated by the banking collapse and helped create the crisis and accelerate its global contagion from the country of its origin¹⁹.

Aided by financial integration, the crisis spread rapidly from the US to the rest of the world²⁰, resulting in a huge global economic downturn, which, with the collapse of a leading **global bank, threatened to bring down the world's financial system in 2008**²¹. At the same time, the inexorable incentives in the private financial sector, all too often, led finance people to engage in abusive behaviour, whether it was mortgage sellers putting people into houses they could not afford in the US, or banks selling high-risk Argentine bonds to unsuspecting households in Italy and Germany, or Indian microfinance banks in Andhra Pradesh loading farmers up on loans in 2010 – **it is said, they all 'provoked a string of suicides'**²².

In Europe, since 1995, the Greek economy recorded growth. However, the debt of State companies and the public sector as a whole, kept increasing at an alarming level²³. At the same time, the Government also started extensive borrowing to fund the 2004 Olympic Games²⁴. Wide corruption, weak tax administration and tax evasion, also put a strain on public finances²⁵.

Due to a combination of these factors, Greece was the first European and Eurozone country to be seriously affected by the crisis. Greece still, to date, continues to be under the heavy burden of strict austerity measures. It was shortly followed by Ireland and Portugal, with Italy, Spain and Cyprus not lagging far behind. Amongst the last to join the Eurozone, Slovenia was also amongst the most recent European and Eurozone countries to feel the peak of the crisis and being forced to bail-out its banking sector, although, without

yield brings return of risky lending practices', *Financial Times*, April 2013, available at: <http://www.ft.com/cms/s/0/c2d87c7c-ae92-11e2-8316-00144feabdc0.html#axzz30EgtwZr2>.

¹⁷ PACE, Consequences of the global financial crisis, Resolution 1651(2009), January 2009, §1, available at: <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta09/ERES1651.htm>.

¹⁸ Bailly M.N., Litan R.E., and Johnson M.S., 'The Origins of the Financial Crisis', *Business and Public Policy* at Brookings, p. 7, available at: http://www.brookings.edu/~media/research/files/papers/2008/11/origin%20crisis%20bailly%20litan/11_origins_crisis_bailly_litan.pdf.

¹⁹ UN, 'Commission of Experts of the President of the UN General Assembly on Reforms of the International Monetary and Financial System', Report, September 2009, p. 132, available at: http://www.un.org/ga/econcrisissummit/docs/FinalReport_CoE.pdf.

²⁰ Lane, P.R., 'Financial Globalisation and the Crisis', presented at the 11th bis Annual Conference on the Future of Financial Globalisation, p. 11, available at: <http://www.bis.org/events/conf120621/lane.pdf>.

²¹ Lane, P.R., 'Financial Globalisation and the Crisis', presented at the 11th bis Annual Conference on the Future of Financial Globalisation, p. 11, available at: <http://www.bis.org/events/conf120621/lane.pdf>.

²² Herman B., Regulating financial sectors for development and social justice, Notes for an expert group meeting organised by the Office of the High Commissioner for Human Rights, April 2013.

²³ Paris A., Dedes S. and Lampridis N., 'Greek Financial Crisis', *Global Business and Management Research – An International Journal*, Vol. 3, nos. 3 and 4., p. 326, available at: <http://www.bookpump.com/upb/pdf-b/233086Xb.pdf>.

²⁴ Itano N., 'As Olympic glow fades, Athens questions \$15 billion cost', *Christian Science Monitor*, July 2008, available at: <http://www.csmonitor.com/World/2008/0721/p04s01-wogn.html>.

²⁵ Janssen R., 'Greece and the IMF: Who Exactly is Being Saved?', *Center for Economic Policy and Research*, July 2010, p 1-2, as per UN HRC, 'Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, Cephias Lumina: Mission to Greece', UN Doc A/HRC/25/50/Add.1, March 2014, available at: http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session25/Documents/A_HRC_25_50_ENG.DOC.

resorting to international borrowing²⁶. At the same time, a number of non-Eurozone Member States, like Hungary, Latvia, and the UK have also been affected by the crisis, though their approach to debt resolution has been somewhat different.

A struggle with the crisis ensued, but the end to it is yet to be seen, as even today, almost six years after the outbreak of the crisis in Europe, short-term perspectives for the continent are seen as very uncertain²⁷ while the social situation in Europe is worsening²⁸. One of the unintended consequences of the bail-out was that, it increased public debt and **shattered confidence in the Government's solvency, as the Member States were bound to** restructure their sovereign debt to avoid outright default, which in turn, became the main justification for austerity policies that prolonged the slump²⁹. In fact, despite the ongoing crisis, only a handful of Member States have restructured their debt so far. Belgium, France, Italy and the UK are still heavily indebted, but have not, so far, resorted to restructuring. The fiscal deficits, engendered by the crisis because of bail-outs, were a significant problem, i.e. lower tax receipts and higher claims on welfare systems were conditioned by the economic slowdown. All of this added to the existing debt loads.

In some countries, unemployment rates reached and then exceeded their historical highs. Concerns have been expressed that the measures introduced to ensure short-term savings may have negative longer-term consequences. Governments are invited to make assessments of what the long-term impacts of the cuts to welfare and services are in areas such as education, health and social care³⁰. However, long-term impacts will also need to be framed against meeting the demands of an ageing population.

In the wake of such threats, Member States were not only invited, but were required to intervene and try to save what could be saved. The result was the introduction of what became known as austerity measures – a combination of economic, policy and legal tools to reduce debt and control public spending, in an attempt to bring the crisis into order.

While those measures have mostly involved tax increases and cuts in social benefits and public sector pay, they have also included increases in some benefits or reductions in taxes for certain protected groups³¹.

The measures introduced have, at times, been overwhelming and have required extensive changes. They have resulted in massive cuts in public expenditure which have affected the bodies established to protect fundamental rights, or have affected the ability of a number of other bodies or systems crucial to the protection of rights, such as the justice systems. For example, institutions entrusted to safeguard human rights in Greece, Ireland, Latvia and the UK have faced cuts in their budgets and staff, and the ombudspersons, in some countries (such as Spain and Slovakia), were forced to close down the decentralised

²⁶ See e.g. Reuters, 'Saved a state bail-out, Slovenes question hefty banking bill', December 2013, available at: <http://www.reuters.com/article/2013/12/15/us-slovenia-banks-idUSBRE9BEOJ220131215>.

²⁷ Caritas Europa, 'The impact of the European crisis', Crisis monitoring report, 2013, p. 12, available at: http://www.caritas.eu/sites/default/files/caritascrisisreport_web.pdf.

²⁸ European Union, 'Social Europe, Current challenges and the way forward', Annual Report of the Social Protection Committee, 2012, p. 8, available at: <http://ec.europa.eu/social/BlobServlet?docId=9760&langId=en>.

²⁹ Skidelsky R., 'The Moral Economy of Debt', Social Europe Journal, October 2014, available at: <http://www.social-europe.eu/2014/10/economy-of-debt/>.

³⁰ Caritas Europa, 'The impact of the European crisis', Crisis monitoring report, 2013, p. 12, available at: http://www.caritas.eu/sites/default/files/caritascrisisreport_web.pdf.

³¹ Social Europe, 'Modelling the distributional effects of austerity measures: The challenges of a comparative perspective', Research note 8/2010, 2010, p. 5, available at: <http://ec.europa.eu/social/BlobServlet?docId=6726&langId=en>.

offices³² – **considered to hinder the institutions' effectiveness**³³. In some EU Member States, cuts in public spending have reduced budgets for courts and bodies with a human rights remit, as well as cuts in funding for a number of measures supporting access to justice, such as legal aid programmes³⁴ and victim support services provided by non-governmental organisations (NGOs)³⁵. Similarly, governmental intervention into the determination of fees of legal professionals, leading to their reduction, has been criticised by the legal profession. Namely, litigators considered that these measures were making it inviable for many firms to continue publicly-funded work, with the combined impact of a loss of work from scope and reduced fees³⁶.

Austerity measures have also resulted in legislative initiatives reducing pensions, funding or the availability of certain social benefits. In some countries, e.g. Cyprus, the measures **resulted in peoples' savings being seized to contribute to the repayment of debt. Indirectly**, the realisation of fundamental rights has also been affected by the withdrawal of funding in the non-governmental sector, which has been weakened by State-centred cultures and the economic crisis³⁷.

Massive debt, in some countries, and the banking and financial sectors in crisis, coupled with a significant reduction in borrowing possibilities, have all contributed to what is widely seen as the worst recession since the Great Depression of the 1930s³⁸. The issue of foreign debt and its impact on human rights and development has preoccupied the international community for more than three decades³⁹. In fact, long before the present crisis, the **'critical importance that debt servicing requirements [should] not be permitted to detract funds from necessary spending in areas relevant for sustainable human development and for the promotion and protection of human rights'**, was already noted and defined in the principal human rights treaties⁴⁰. Although a number of official initiatives, to address the issue of foreign debt and its impact on human rights and development, have been implemented over the years, these failed to deliver an equitable and enduring solution in-

³² CoE Commissioner, 'National Human Rights Structures can help mitigate the effects of austerity measures', Human Rights Comment, May 2012, available at: <http://www.coe.int/en/web/commissioner/-/national-human-rights-structures-can-help-mitigate-the-effects-of-austerity-measur-1>.

³³ CoE Commissioner on Human Rights, 'Safeguarding human rights in times of economic crisis', issue paper, November 2013, p. 55, available at: <https://wcd.coe.int/ViewDoc.jsp?id=2130915>.

³⁴ For example, in April 2014, after having been defeated 14 times in the House of Lords, the Legal Aid, Sentencing and Punishment of Offenders Act was adopted in the UK, after a tied vote. See e.g. The Guardian, 'Legal aid cuts: The forgotten pillar of the welfare state – a special report', September 2014, available at: <http://www.theguardian.com/law/2014/sep/25/-sp-legal-aid-forgotten-pillar-welfare-state-special-report-impact-cuts>. In the discussions which preceded the adoption of the Act, the Legal Action Group estimated that over 650,000 members of the public might have been affected by the cuts. See Legal Action Group, 'The Real Impact of Legal Aid Advice Cuts', March 2010, available at: http://www.lag.org.uk/media/48259/the_real_impact_of_legal_aid_advice_cuts.pdf.

³⁵ In this regard, it was observed that mostly the small local level organisations, which relied more on governmental funding. For a broader discussion on the impact of austerity measures on NGOs, see: European Economic and Social Rights Committee, 'The impact of the crisis on civil society organisations in the EU – risks and opportunities', 2013, available at: http://ec.europa.eu/citizenship/pdf/eesc_qe-32-12-548-en-c_en.pdf.

³⁶ Thomas C., 'Accessing justice in the age of austerity: what legal aid reform means for women seeking asylum', in Women's Asylum News, Issue 103, July 2011, available at: <http://www.refworld.org/pdfid/4e2963722.pdf>.

³⁷ Council of Europe Think-Tank Task Force, 'Smart Power – Ways of enhancing the Council of Europe's Impact', advisory report, p. 19, available at: http://www.coe.int/t/policy-planning/think_tanks/Smart_power_report.pdf.

³⁸ UN Office of the High Commissioner on Human Rights, 'Report on austerity measures and economic and social rights', 2013, p. 7, available at: http://www.ohchr.org/Documents/Issues/Development/RightsCrisis/E-2013-82_en.pdf.

³⁹ For example, already during the 1982 Mexico crisis the relationship between debt, growth and development was examined. See e.g. Dornbusch R., Werner A., 'Mexico: Stabilization, Reform and No Growth', Brookings Papers on Economic Activity, 1994, available at: http://www.brookings.edu/~media/Projects/BPEA/1994%201/1994a_bpea_dornbusch_werner_calvo_fischer.PDF.

⁴⁰ UN Executive Committee on the Economic and Social Affairs, 'Finding solutions to the debt crisis of the developing countries', UN Doc. ECESA/99/2, May 1999, available at: <http://www.cepal.org/publicaciones/xml/6/4306/lcl1230i.pdf>.

line with the political commitments reflected in various international resolutions and declarations, notably, the Millennium Declaration and the Monterrey Consensus of the International Conference on Financing for Development⁴¹. As a result, there has been widespread and growing concern that measures designed to lift economies out of recession were failing, not only to fulfil their primary goal, i.e. contribute to economic recovery⁴², and damaging rights which have been recognised as inalienable and which should not have been limited by financial arguments.

Moreover, 'the central argument promoting austerity programmes across Europe has been that, they were needed to overcome major public budget deficits, often said to have been caused by extensive spending under social welfare budgets during the financial and economic crisis. Increasingly, however, many experts and international organisations question the effectiveness of such consolidation programmes and have started to recognise that the financial crisis, and the enormous rescue packages for European banks, are amongst the root causes of the crisis situation, and not one of its consequences⁴³'.

1.2. The anti-crisis intervention

Up to the mid-1990s, there was a close link between economic and social development in the EU. Member States with a high per capita income made more resources available to the welfare state – measured in terms of the social expenditure ratio, than Member States at a lower economic level, not only in absolute terms but also relatively. In the period before the crisis, some Member States that have been catching-up economically, have expanded their welfare states relatively strongly, i.e. Greece, Portugal and Hungary⁴⁴.

However, with the outbreak of the crisis, austerity measures required swift and sometimes voluminous changes in Member State action, including significant budget cuts. The way in which Member States have introduced those changes, where they have chosen to make cuts, and what alternatives or mitigating actions have been taken, have all affected the way in which fundamental rights are impacted.

The scale of the economic crisis has required significant co-ordinated intervention by Governments, international **financial institutions and the EU**. As 'interventionism' grew, the measures introduced by Governments became broader and were increasingly focused on long-term structural reform. The measures used vary in detail between Member States, according to their own specific situation, although the underlying issues and objectives are often the same. Those objectives are usually set around structural fiscal consolidation and

⁴¹ UNHRC, 'Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, Cephias Lumina, Guiding principles on foreign debt and human rights', UN Doc. A/HRC/20/23, April 2011, §1, available at: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-23_en.pdf.

⁴² UNHRC, 'Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, Cephias Lumina, Guiding principles on foreign debt and human rights', UN Doc. A/HRC/20/23, April 2011, p. 8, available at: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-23_en.pdf.

⁴³ PACE Committee on Social Affairs, Health and Sustainable Development, 'Report on Austerity measures – a danger for democracy and social rights', Doc.12948, June 2012, available at: <http://assembly.coe.int/ASP/Doc/XrefViewPDF.asp?FileID=18745&Language=en>.

⁴⁴ Busch K., Hermann C., Hinrichs K., Schulten T., 'Euro Crisis, Austerity Policy and the European Social Model How Crisis Policies in Southern Europe Threaten the EU's Social Dimension', Fridrich Ebert Stiftung, p. 6, available at: <http://library.fes.de/pdf-files/id/ipa/09656.pdf>.

reforms, financial sector regulation and supervision, enhancement of growth, as well as reducing unemployment.

The crisis had been differently handled within the EU – depending on whether the country affected belonged to the Eurozone or not, and whether it had required an EU or international intervention in order to meet its debt repayment obligations. Notably, concerns that the crisis in one Eurozone country would spill over to others, led to co-ordinated action by the European Commission, the European Central Bank (ECB) and the Eurozone countries. At the same time, given that a significant proportion of funding for the bail-out of Member States came from the International Monetary Fund (IMF), a tripartite authority was born – the Troika, consisting of the EU, the ECB and the IMF.

Due to the specific circumstances in which the Eurozone economies function, including limitations in the available financial mechanisms to deal with the crisis, the crisis in the Eurozone threatened the viability of the Euro⁴⁵. This has caused EU institutions to become heavily involved in determining the financial arrangements of the Eurozone countries with the IMF through the Troika. The non-Eurozone countries were, on the other hand, left outside the Troika but have, nevertheless, been conditioned to undergo austerity measures through the various arrangements they have entered into with the borrowing institutions.

With the European Financial Stabilisation Mechanism (EFSM), the European Financial Stability Facility, and the Treaty establishing the European Stability Mechanism (ESM Treaty), European instruments have been rapidly developed. Through these mechanisms, the Member States concerned have established and implemented austerity measures and structural reforms on the basis of Memoranda of Understanding (MoUs). The MoUs contain detailed timetables for the implementation of austerity measures and structural reforms, to which the countries must adhere to receive the relevant credit tranches. The MoUs were **negotiated by the Troika and are widely seen as having a negative impact on citizens' rights**⁴⁶.

As of September 2013, the IMF had standing arrangements with five Member States (including four Eurozone States: Cyprus, Greece, Ireland and Portugal), which had at their disposal, from the IMF, a total of 70 billion Euros in September 2014⁴⁷, and to which strict retrenchment or austerity policies were attached.

Compliance with democratic standards by the Governments was questioned, as 'the sovereignty of states and Governments facing crisis situations diminishes; decisions are taken on the basis of very short-term considerations, alleged urgent necessities and by following urgent procedures, whilst the aspects of transparency and democratic processes are neglected⁴⁸.

⁴⁵ For a broader discussion on the particularities of handling the crisis within the framework of the monetary union, see for example: Sapir A., Wolff G., B., de Sousa C. and Terzi A., 'The Troika and financial assistance in the euro area: successes and failures', European Parliament, ECON Committee, February 2014, available at: [http://www.europarl.europa.eu/RegData/etudes/etudes/join/2014/497764/IPOL-ECON_ET\(2014\)497764_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2014/497764/IPOL-ECON_ET(2014)497764_EN.pdf).

⁴⁶ European Parliament, Committee on Economic and Monetary Affairs, 'Report on the enquiry on the role and operations of the Troika (ECB, Commission and IMF) with regard to the euro area programme countries', 2013/2277(INI), 28 February 2014, p. 35, available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML%2BCOMPARL%2BPE-526.111%2B01%2BDOC%2BPDF%2BV0//EN>.

⁴⁷ It should be noted, though, that none of the countries used their available quota fully. Poland, for example, has not been using the IMF funds, thus made available. IMF Factsheet, 'The IMF and Europe', September 2014, available at: <https://www.imf.org/external/np/exr/facts/pdf/europe.pdf>.

⁴⁸ PACE Committee on Social Affairs, Health and Sustainable Development, 'Report on Austerity measures – a danger for democracy and social rights', May 2012, available at: http://www.assembly.coe.int/Communication/asocdoc17rev_2012.pdf.

The crisis, and the response thereto, have inevitably impacted individuals in many ways. Importantly, it has affected them by undermining their ability to enjoy their human rights and that of Member States to fulfil their obligations to safeguard human rights. **Serious concerns have been expressed in relation to the negative impacts of the 'global economic and financial crisis on economic and social development, and on the full enjoyment of *all human rights in all countries* [emphasis added]⁴⁹. In particular, the rights of vulnerable and marginalised groups, such as women and children, have come into question⁵⁰. However, many now argue that the initial human rights impacts of the financial crisis have been further exacerbated by the subsequent policy responses of Member States⁵¹. Thus, what had begun as a financial crisis is seen as rapidly turning into a global human rights crisis⁵², and together with the food crisis, energy crisis and climate crisis, in some more dramatic commentaries it is suggested that we may be facing a crisis of civilisation⁵³. The European Parliament also found it difficult to observe the financial crisis as isolated from the global systemic crisis⁵⁴.**

In addition, the reasons for bail-out arrangements are being questioned, with claims that the Troika interventions were not introduced with a view to helping countries and their people but rather, to bail-out the international financial institutions⁵⁵. In fact, the solvency of financial institutions, which hold significant portions of sovereign bonds, has become inextricably linked to sovereign solvency. Hence, in effect, bailing-out countries, indeed, means bailing-out financial institutions. Even the impact of austerity measures on the revival of economies is being questioned, with leading economists calling austerity a 'vicious circle' and a 'suicide pact'⁵⁶.

The deepening of the crisis and the reality of austerity is being seen as threatening more than six decades of growing social solidarity, economic integration and human rights protection across Europe⁵⁷. It may be argued that austerity is not the only cause for this threat. The long-term financial sustainability of the welfare state is being brought into question by ageing populations and the already-high levels of State debt – even before the crisis. Nonetheless, civil, political, economic, social and cultural rights are being considered as essential elements of a sustained and inclusive economic recovery⁵⁸, while international fundamental rights obligations highlight that economic hardship cannot be used as the sole reason for reducing levels of protection.

⁴⁹ UN HRC, 'The impact of the global economic and financial crises on the universal realization and effective enjoyment of human rights', UN doc. A/HRC/S-10/L.1, February 2009, available at: <http://www.ohchr.org/EN/HRBodies/HRC/SpecialSessions/Session10/Pages/10thSpecialSession.aspx>.

⁵⁰ UNHCHR, 'Promoting a rights-based approach to economic stabilization, recovery and growth', background paper, April 2013, available at: http://www.ohchr.org/Documents/Issues/Development/RightsCrisis/OHCHR_Background_Paper.doc.

⁵¹ UNHCHR, 'Promoting a rights-based approach to economic stabilization, recovery and growth', background paper, April 2013, available at: http://www.ohchr.org/Documents/Issues/Development/RightsCrisis/OHCHR_Background_Paper.doc.

⁵² Dionis S. M., 'Spain's struggle for human rights: A human rights approach to the consequences of the economic crisis in Spain and the demands of the Indignados movement', Nurnberger Menschenrechtszentrum, 2012, available at: <http://www.menschenrechte.org/wp-content/uploads/2012/08/Spains-struggle-for-human-rights.pdf>.

⁵³ Houtart F., 'The Multiple Crisis and Beyond', Rosalux Europa No. 2, April 2009, p. 1, available at: http://www.tni.org/sites/www.tni.org/files/FrancoisHoutart_Globalizs_special.pdf.

⁵⁴ European Parliament resolution of 18 April 2013 on the impact of the financial and economic crisis on human rights, 2012/2136/(INI), available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A7-2013-0057+0+DOC+XML+V0//EN>.

⁵⁵ Record, 'Greece and now Cyprus: Is Troika pushing austerity for all the wrong reasons?', March 2013, available at: <http://www.newsrecord.co/greece-and-now-cyprus-is-troika-pushing-austerity-for-all-the-wrong-reasons/>.

⁵⁶ Greenwood J., 'Austerity a 'suicide pact', Stiglitz says', Financial Post, October 2011, available at: <http://business.financialpost.com/2011/10/25/austerity-is-suicide-pact-for-major-economies-stiglitz/>.

⁵⁷ CoE Commissioner on Human Rights, 'Safeguarding human rights in times of economic crisis', issue paper, December 2013, available at: <https://wcd.coe.int/ViewDoc.jsp?id=2130915>.

⁵⁸ CoE Commissioner on Human Rights, 'Safeguarding human rights in times of economic crisis', issue paper, December 2013, p. 27, available at: <https://wcd.coe.int/ViewDoc.jsp?id=2130915>.

2. THE METHODOLOGY FOR THE STUDY

The present study aims to describe and examine the impact of the current economic crisis on fundamental rights and civil liberties in **Belgium, Cyprus, Greece, Ireland, Italy, Portugal and Spain**, paying specific attention to the nature and impact of (legislative, regulatory or other) measures taken by Member States in the wake of the economic crisis. The study further aims to analyse the impact of such measures in the framework of European and international obligations binding on Member States in respect of certain aspects of the rights to **education, healthcare, pensions, work and access to justice**. In addition, it draws attention to **other rights** which might have been affected, to a lesser extent, by the measures. The study also explores the reactions to the measures imposed by various national and international **monitoring mechanisms**, such as the national courts or equality bodies, or international judicial and quasi-judicial bodies. The approach of Member States is also assessed in relation to the exercise of the **freedoms of expression and assembly**, in reaction to the crisis and austerity measures imposed in response thereto, and the possible limitations imposed on those freedoms.

The intention of the study was to research and analyse the situation in a selection of Member States, focusing on those that have been particularly affected by the economic crisis and have adopted measures in reaction thereto. The selection of Member States ensured that a balanced picture is drawn, with special attention paid to those Member States that have taken part in international financial assistance programmes. Similarly, given that the area of fundamental rights is very broad, only a selection of core rights was considered.

The study analyses national legislative and regulatory measures which affect the exercise of fundamental rights in the selected Member States, insofar as those measures were adopted in the wake of the crisis and their adoption was justified, explicitly, or implicitly, on the basis of the current economic situation, or on the need to react thereto.

Given the continuously changing situation in the observed Member States, it was necessary to determine a cut-off date for the observations in the comparative analysis and country reports. This date was set to be **30 June 2014**. However, if a major development occurred after that date, and up to the finalisation of the study in **February 2015**, these developments were noted appropriately.

2.1. Selection of Member States

Even though it may be said that each Member State was, to some extent, affected by the global crisis, not all of them were affected in the same way and with the same intensity. Therefore, in developing the methodology for this study, it was decided to select countries for country specific research of the impact of the crisis on fundamental rights. In approaching the selection of countries to cover, particular attention was paid to several criteria, as described in the following paragraphs.

Special attention was paid to the Member States that entered into **arrangements with the so-called Troika**: an *ad hoc* borrowing mechanism comprised of the International Monetary Fund (IMF), the European Commission and the European Central Bank (ECB). However, in order to ensure a balanced picture, it was necessary to also include a number of Member States that have not resorted to international finance assistance programmes.

Furthermore, in order to be able to have a point of comparison between different legal systems, an effort was made to have both the **continental and the common law** systems represented. Also, an effort was made to make, as far as possible, a fair geographic representation of EU Member States.

Based on the above criteria, the following Member States were selected: Belgium, Cyprus, Greece, Ireland, Italy, Portugal and Spain.

Cyprus, Greece, Ireland, Portugal and Spain were primarily selected due to their commitments to Troika, and austerity measures which were imposed in those countries either stemming directly from the Memoranda of Understanding (MoUs) with the Troika, or as a consequence of the entire complexity of financial, economic and social turbulence caused by the imposed austerity measures.

Even though **Belgium** has not resorted to borrowing from the international institutions, the economic and financial crisis led to stricter monitoring of the Belgian budget by the EU. The Belgian financial sector has been severely affected by the crisis which, coupled with a deep institutional crisis, has led to a lengthy period of institutional dysfunction. Having managed to stand out from the rest of the Eurozone after the first wave of the crisis in 2008-2009, in 2011, Belgium entered a second cycle of crisis. This was characterised by negative economic growth and increased unemployment. It was, therefore, deemed useful to observe how austerity measures affected fundamental rights in such circumstances.

Italy is another non-Troika State included in this study. In the period 2008-2013, Italy's economy shrank by 7.5% and its population became significantly poorer, with average incomes (GDP per capita) going back 18 years to 1996 levels. More than 450,000 jobs were lost and, one-after-another, Italian Governments introduced innumerable measures to respond to the crisis. In addition, Italy is one of the largest Eurozone debtors with a gross debt of 136% of the annual GDP – holding its infamous second place to Greece⁵⁹. These facts made it reasonable to take a closer look into the impacts of austerity measures on fundamental rights in Italy.

In the selection of countries, significant consideration was given towards including other Member States which have been affected by the crisis and, have resorted to international borrowing.

Thus, countries such as Hungary and Latvia were considered for scrutiny under the present study. In fact, the fundamental rights situation in **Hungary** has been under examination by international and European observers. Both the European Commission and the European Parliament have warned that some of the numerous initiatives to amend the Hungarian Constitution might represent a violation of EU legislation and the rule of law⁶⁰. Further concerns have been expressed in relation to various measures against civil society and media⁶¹. However, these measures are a consequence of the official Hungarian policies

⁵⁹ IMF Survey, 'Labor, Judiciary, Tax Reforms Can Help Boost Italy's Economy' September 2014, available at: <http://www.imf.org/external/pubs/ft/survey/so/2014/car091814a.htm>.

⁶⁰ Financial Times, 'Brussels warns Hungary on constitution', March 2013, available at: <http://www.ft.com/cms/s/0/07912816-881c-11e2-b011-00144feabdc0.html#axzz3MqXRieAR>; European Parliament News, 'MEPs voice concerns over constitutional changes in Hungary', April 2013, available at: <http://www.europarl.europa.eu/news/en/news-room/content/20130416STO07356/html/MEPs-voice-concerns-over-constitutional-changes-in-Hungary>.

⁶¹ Gall L. and Gogia G., 'Dispatches: Hungary is dragging the EU in the wrong direction', Human Rights Watch, November 2014, available at: <http://www.hrw.org/news/2014/11/17/dispatches-hungary-dragging-eu-wrong-direction>.

rather than those of imposed politics of austerity⁶². Furthermore, Hungary has now exited the main wave of the crisis and the European Parliament has already extensively discussed the situation in Hungary⁶³. Due to all of these reasons, Hungary was eventually excluded from the selection of countries for the present study.

Latvia was considered as another possible Member State for observation in the study. Despite being considered a success and accessing the Eurozone in 2014, a number of criticisms have been addressed to the Latvian austerity programme⁶⁴. Nevertheless, given that Latvia is a relatively small Member State, and commended for having exited the crisis, the interventions through austerity were of a comparably less significant scale than in other observed Member States and it was, therefore, not included in the analysis.

2.2. Selection of rights

For the purposes of the present study, fundamental rights are understood as rights setting-out the minimum standards to ensure that a person is treated with dignity, and include, primarily: the rights listed or referred to in the EU Charter of Fundamental Rights (EU Charter); rights forming part of the constitutional traditions common to Member States; rights recognised in the European Convention for the Protection of Human Rights and Fundamental Freedom (ECHR) and, in the case-law of the European Court of Human Rights (ECtHR); rights listed in the Social Charters of the Union and of the Council of Europe; relevant national constitutional rights. Furthermore, this list of rights is complemented by the rights guaranteed in broader international instruments, such as the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

It needs to be noted, however, that the EU instruments are more inclined to use the term **'fundamental rights'**, whereas other instruments use the term **'human rights'**, **'human rights and fundamental freedoms'**, or even **'fundamental human rights'**. While a theoretical discussion may be had on the difference between the meanings of the different terms, in the present study they are used interchangeably and without prejudice towards possible different meaning of each of them.

The notion of fundamental rights is a broad concept, determined by a number of international, regional and national instruments. In the EU Charter alone, the protection of

⁶² For a discussion on what is seen as 'deterioration' of democracy in Hungary see e.g. Bugarič B., 'Protecting Democracy and the Rule of Law in the European Union: The Hungarian Challenge', London School of Economics, LEQS Paper No. 79/2014, July 2014, available at: <http://www.lse.ac.uk/europeanInstitute/LEQaS/LEQSPaper79.pdf>. See also Democracy Reporting International, 'In Need of New Tools: Protecting Democracy in EU Member States', Briefing paper 39, July 2013, available at: http://www.democracy-reporting.org/files/dri-bp-39_in_need_of_new_tools_-_protecting_democracy_in_eu_member_states.pdf.

⁶³ See e.g. Resolution on the recent political developments in Hungary, 2012/2511(RSP), February 2012, available at: http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P7-TA-2012-0053+0+DOC+PDF+V0//EN_or Resolution on the situation of fundamental rights: standards and practices in Hungary (pursuant to the European Parliament resolution of 16 February 2012), July 2013, available at: [http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2012/2130\(INI\)](http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2012/2130(INI)). As a matter of fact, the Parliament continues to hold the fundamental rights situation in Hungary on the agenda. Hence, on 22 January 2015 a hearing was held on the fundamental rights situation in Hungary by the LIBE Committee.

⁶⁴ See e.g. Jansons J. (Ombudsperson of Latvia), 'Experiences with austerity measures and violations [of] human rights in times of limited economic resources', speech at the side event of the 27th General Meeting of the International Coordinating Committee of National Institutions of the Promotion and Protection of Human Rights, March 2014, available at: http://www.tiesibsargs.lv/files/content/runas/ICC27%20Side%20event_J.Jansons_ENG.pdf.

more than twenty fundamental rights is guaranteed. Other instruments provide protection of additional rights for all, or **specific protection of those 'general' rights or 'group specific' rights**⁶⁵ for certain vulnerable groups. Furthermore, within the austerity context, it was evident that some rights have been affected more than others. Therefore, it was not deemed necessary to analyse all the rights – which would be a voluminous task. A selection of rights for analysis needed to be made on the basis of quantitative and qualitative criteria as described below. This selection of rights was then verified by the experts involved in the preparation of the national studies and the synthesis study.

Of the **quantitative criteria**, it was the frequency and nature of reporting on fundamental rights affected by the crisis that were first considered⁶⁶. The sources for such analysis were EU bodies and international institutions, as well as wider sources, e.g. national legislative and policy instruments, scientific articles and media. At the same time, data regarding the likely proportion of the population affected by the possible interference was also taken into consideration, e.g. if the overall reform of the healthcare system was likely to affect the majority, if not all, of a country's population.

The **qualitative criteria** used were:

- the estimate of the possible consequences the interference might have – in terms of their impact on the enjoyment of other rights for each individual;
- that the 'subfamilies' of the economic, social and cultural and the civil and political rights are represented;
- that the choice of those rights ensures the feasibility of the study and allows in-depth research into the right.

Following quantitative and qualitative analysis, the rights selected to be evaluated against austerity measures interfering with them, and their impacts were the: **right to education, right to healthcare, right to work, right to pension and access to justice**. In addition, it was important to review the exercise of the right to **freedom of expression and freedom of assembly**. Even though these freedoms were not, as such, directly subject to austerity measures, protests – which were staged as a reaction to those measures, were, in some cases, subject to interventions. Consequently, these freedoms also became the subjects of the present study.

Finally, in order to give due account to the specificities of each country proposed, and to provide broader reflection on the possible impacts, it was necessary to, briefly, present **other rights** affected in each of the observed Member States. These additional rights are the: **right to housing** in Belgium, Cyprus, Ireland and Spain; **right to property** in Cyprus, Greece and Italy; **rights at work** in Cyprus, Greece and Portugal; **freedom of**

⁶⁵ For example, the guarantees from the UN Convention on the Rights of Persons with Disabilities, on the right to inclusive education or independent living will only concern the particular group of people with disabilities. Similarly, the Convention on the Rights of the Child provides for the protection of specific, child-centred, rights.

⁶⁶ In particular, the starting point for identification of rights was an overview of the rights reported as interfered with in the following documents: CoE Commissioner, 'Safeguarding human rights in times of economic crisis', issue paper, December 2013, available at: <https://wcd.coe.int/ViewDoc.jsp?id=2130915>; FRA, 'Protecting fundamental rights during the economic crisis', working paper, December 2010, available at: http://fra.europa.eu/sites/default/files/fra_uploads/1423-FRA-Working-paper-FR-during-crisis-Dec10_EN.pdf; decisions of the ECtHR; decisions of the ECSR; UN HCHR, 'Report on austerity measures and economic and social rights', UN Doc. E/2013/82, May 2013, available at: http://www.un.org/ga/search/view_doc.asp?symbol=E/2013/82; and UN HCHR 'Promoting a rights-based approach to economic stabilization, recovery and growth', background paper, April 2013, available at: http://www.ohchr.org/Documents/Issues/Development/RightsCrisis/OHCHR_Background_Paper.doc.

information in Greece; **right to social security** in Ireland and Portugal; **right to water** in Ireland. Some specific issues in relation to non-discrimination are also looked at, namely, the restriction of **rights of foreigners** in Belgium and **hate crimes and hate speech** in Greece.

While the initial selection of rights was made in advance of the study, it was confirmed by the stakeholders, at both national level and EU level, during the research.

2.3. Research methods and structure

The analytical framework of the study was based on desk research and the review of literature, as well as on consultations with experts at national level and EU level⁶⁷. The aim of the research was to highlight the issues underlying the development of the crisis, as well as the reasons which led to the imposition of austerity measures, together with their impact on the selected fundamental rights. Furthermore, the research was directed towards identifying areas for improvement and formulating recommendations in that respect.

Most of the findings relied on desk research of legislation, policies and findings of different national and international sources, e.g. reports, studies and articles. A cautious and balanced approach was taken with respect to journalistic sources of information, where the aim was to reference only reliable and verified press sources, and to use a variety of such sources. In addition, a number of stakeholders were consulted. For the purposes of the national studies, stakeholders were identified to verify the findings or identify impacts of relevant measures. In addition, for the purposes of the present synthesis study, stakeholders were consulted to identify a broader EU level context and the impacts of the crisis on fundamental rights.

Given the different situations in the observed Member States, the national studies were not drafted in such a way as to enable a full comparative analysis of the findings. However, a comparative analysis was performed whenever, and to the extent possible.

The seven national studies, on which this study is based, provide more detailed information on the national legal and institutional systems through which austerity measures have been introduced. The national studies are published separately.

This synthesis study is structured as follows:

- the introduction gives an overview of circumstances which caused the crisis and the **Member States' responses thereto, and at the same time, setting the background for the protection of the rights presented in the study.**
- the introduction is followed by the description of methodology (section 2). Sections 4 to 9 provide an overview of the national measures in the seven observed Member States – in relation to the respective selected rights, with an analysis of the impact of austerity measures on each of the rights across the Member States observed. Each of sections 4

⁶⁷ The experts consulted have all had the background knowledge of fundamental rights, as well as the economic background. They also have a deep understanding of the crisis and of the relationship between the crisis, austerity and fundamental rights.

- to 9 also provides existing international mandatory requirements, obligations and rights set in the international and European legal frameworks for the protection of the respective right analysed in the section.
- Section 10 provides an overview of the impact of austerity measures on other fundamental rights, which were identified as characteristic of particular Member States, as well as comparative analysis, wherever possible, i.e. the right to housing identified in Belgium, Cyprus, Ireland and Spain.
- Section 11 provides an overview of the international and European monitoring mechanisms and their views regarding austerity measures which interfere with the rights observed in the study. Finally, section 12 describes the need for EU action within the remit of EU competences, providing conclusions drawn from the findings in the study and specific recommendations for action at EU level.

3. PROTECTION OF THE SELECTED FUNDAMENTAL RIGHTS

3.1. Setting the framework for protection

The development of a legal framework for the recognition and protection of fundamental rights truly started at the international level with the adoption by the UN General Assembly, of the 1948 Universal Declaration of Human Rights (UDHR).

Development of the framework

Following the Second World War, Europe was the first region to further develop these rights with the adoption of the ECHR which, in turn, set the basis for the establishment of the ECtHR in 1959. This was followed, in 1960, by the adoption of the European Social Charter (ESC), and the Additional Protocol Providing for a System of Collective Complaints in 1995.

At international level, the 1960s also saw further developments with the adoption of two standard-setting universal human rights instruments: the 1966 ICCPR and ICESCR.

Legislative action from the 1950s and 1960s has been supplemented over the years at international, European and national levels, with practical measures to promote, protect and enforce human rights. Progress in the field, within the EU Member States, has been assisted through a prolonged period of relative peace, coupled with EU enlargement and economic prosperity.

EU values

Human dignity, freedom, democracy, equality, the rule of law and respect for human rights grew to become universal values embedded in the EU Treaties since their inception⁶⁸. They are now core values of the EU and are referred to at the very beginning of the Treaty on the European Union – which not only recalls the inviolability of fundamental rights but also introduces the Charter of Fundamental Rights of the European Union (EU Charter) as one of the formal sources of EU law. Member States are committed to the protection of fundamental rights through EU instruments and also through international conventions, most notably the UN UDHR and **the Council of Europe's ECHR**.

In addition, all 28 Member States have ratified the basic text of the ECHR, although not all Member States have ratified all of the protocols, as well as the ESC. Eighteen Member States have ratified the Revised Social Charter, and 15 Member States have accepted the jurisdiction of the European Committee for Social Rights (ECSR)⁶⁹ to decide upon collective complaints. Furthermore, all Member States have ratified the ICCPR and ICESCR. Other non-ratified key UN human rights instruments by EU Member States are an exception, rather than the rule⁷⁰.

More recently, the Treaty on the European Union (TEU) introduced the EU Charter as one of the formal sources of EU law⁷¹. The EU Charter is binding only with respect to acts

⁶⁸ See e.g. Borchardt K-D., 'The ABC of European Union law', European Union, 2010, p. 25, available at: http://europa.eu/documentation/legislation/pdf/oa8107147_en.pdf.

⁶⁹ Full list of ratifications is available at: http://www.coe.int/t/dghl/monitoring/socialcharter/presentation/Overview_en.asp.

⁷⁰ For information on the status of ratifications of the UN human rights treaties, see United Nations Treaty Collection, available at: <https://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=fr>.

⁷¹ TEU, Article 6(1).

undertaken by EU institutions, or by Member States, in implementing EU law. However, it acts as a guiding instrument setting-out the framework, with respect to dignity, freedom, **equality, solidarity, citizens' rights and justice**. Thus, for the first time, the EU Charter sets out, in a single document, all civil, political, economic and social rights of persons living in the EU – whether citizens or not.

In addition to the EU Charter, the TEU imposed an obligation on the EU to ratify the ECHR⁷² and, thus, subject its supranational actions and measures to the scrutiny of the ECtHR. Nevertheless, five years since the entry into force of this provision of the TEU, ratification is **yet to happen**. The Court of Justice of the European Union (CJEU) gives the ECHR 'special significance' as a 'guiding principle' in its case law⁷³. Yet, the final text of the accession agreement between the Council of Europe and the EU of April 2013, was found not to be in accordance with EU law. EU accession to the ECHR has, therefore, been postponed to an unknown time in the future⁷⁴.

Differentiation between rights

While there is no such thing as the hierarchy of rights, the range of fundamental rights set out in various international and EU instruments are, sometimes, broadly categorised between civil and political rights on the one hand, and economic, social and cultural on the other. Notably, it is largely the civil and political rights which are subject to immediate effect and are defined in absolute terms, requesting full compliance with the standards set in the instruments. The economic, social and cultural rights are mostly subject to progressive realisation, meaning that they do not have to be implemented immediately, but are allowed to be implemented over a certain period of time until fully achieved. Furthermore, economic, social and cultural rights are also often subject to different **monitoring mechanisms, which are sometimes seen as 'softer'**⁷⁵.

Thus, for example, the ECtHR receives individual applications which are subject to decision in a binding judgment. The ESC, however, is a very complex instrument, which allows countries to make a choice of rights to be protected. These rights are then subject to progressive realisation. The implementation of these rights may be subject to a collective complaint, but only by a limited number of organisations (never individuals), which is then

⁷² TEU, Article 6.

⁷³ Polakiewicz J., 'Fundamental Rights In Europe: A Matter For Two Courts EU law and the ECHR: Will EU accession to the European Convention on Human Rights square the circle?', **Speech at the workshop on 'Fundamental Rights In Europe: A matter For Two Courts'**, held at Oxford Brookes University, 18 January 2013, available at: http://www.coe.int/t/dghl/standardsetting/hrpolicy/accession/Accession_documents/Oxford_18_January_2013_versionWeb.pdf.

⁷⁴ CJEU Opinion 2/13, 18 December 2014, available at: <http://curia.europa.eu/juris/document/document.jsf?text=&docid=160882&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=40247>.

⁷⁵ For example, in the CoE context, two kinds of weaknesses 'could be supposed: substantive and procedural. Substantive weakness is indeed attributable not only to the Charter but to social rights drafting in general, which can be soft and subject to discretion. This particularity should not be understood as a real weakness, because it permits the flexibility necessary to respond to various issues. The second weakness can be seen as the problem of justiciability, linked also to the lack of enforceability. This particularity seems to be a real weakness in relation to individual rights'. Akilloğlu T., 'Some Critical Considerations on the European Social Charter and the Collective Complaints Protocol', *Studia z zakresu prawa pracy*, 2009, available at: http://www.yargitay.gov.tr/abproje/eng/belge/rt2/Akillioglu_ESCandtheCollectiveComplaintsProtocol.pdf.

subject to a decision (never a judgment) of the ECSR⁷⁶. Nonetheless, States always have an obligation to respect, protect and fulfil defined human rights⁷⁷.

There are, arguably, important reasons and distinctions between these different sets of rights, but taking such an approach is both contentious and complex given the inter-relationship between, and overlap of, rights. Importantly, human rights theory rejects any sort of division of human rights⁷⁸, viewing them as interrelated, interdependent and indivisible⁷⁹. Nevertheless, it is evident that, in recognising these rights, the Member States have perceived differences between them. Most recently, for example, in accepting the Lisbon Treaty, both Poland and the UK secured a protocol which states that Title IV of the EU Charter, which contains economic and social rights, does not create justiciable rights – except to the extent that such rights are already guaranteed in national law⁸⁰.

For some rights, implementation must be immediate and unconditional, such as the prohibition of torture, inhuman and degrading treatment, and its application in prisons, where a lack of State resources cannot justify conditions contrary to the prohibition⁸¹. Similarly, the lack of funds cannot be used as an excuse for failure to enforce a final domestic judgment⁸². This immediate application is usually reserved for the group of civil and political rights, regardless of the costs they might incur⁸³.

Progressive realisation and prohibition of retrogression

There are rights which are subject to progressive realisation, i.e. economic, social and **cultural rights, which are often seen as the more 'costly' rights.** **Progressive realisation** does not mean that the right may remain unguaranteed and that the States may decide not to protect it at all. It means that, while the full realisation of the relevant rights may be achieved progressively, steps towards that goal must be taken within a reasonably short time after the Covenant's entry into force for the States concerned. Such steps should be deliberate, concrete and targeted as clearly as possible towards meeting the obligations **recognised in the Covenant**⁸⁴.

⁷⁶ For a further discussion on the effectiveness of the collective complaint mechanism, see e.g. Churchill R.R. and Khaliq U., 'The Collective Complaints System of the European Social Charter: An Effective Mechanism for Ensuring Compliance with Economic and Social Rights?', *European Journal of International Law* 2004, available at: <http://ejil.oxfordjournals.org/content/15/3/417.full.pdf>.

⁷⁷ See e.g. UN OHCHR, 'International Human Rights Law', available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/InternationalLaw.aspx>.

⁷⁸ 'World Conference on Human Rights', 14-25 June 1993, Vienna, Austria, available at: <http://www.ohchr.org/EN/ABOUTUS/Pages/ViennaWC.aspx>.

⁷⁹ See e.g. Whelan D., 'Untangling the Indivisibility, Interdependency, and Interrelatedness of Human Rights', *The Human Rights Institute, University of Connecticut*, April 2008, available at: <http://web2.uconn.edu/economics/working/7.pdf>.

⁸⁰ Protocol No 30 on the Application of the Charter of Fundamental Rights of the European Union to Poland and to the United Kingdom, OJ C 326/313, 26 October 2012, available at: https://www.ecb.europa.eu/ecb/legal/pdf/c_32620121026en.pdf.

⁸¹ See e.g. ECtHR, *Bazjaks v. Latvia*, no. 71572/01, judgment of 19 October 2010, §111, available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-101223> and *Mamedova v. Russia*, no. 7064/05, judgment of 1 June 2006, §63, available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-75646>.

⁸² See ECtHR, *Yuriy Nikolayevich Ivanov v. Ukraine*, no. 40450/04, judgment of 15 October 2009, available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-95032>.

⁸³ Therefore, the right to vote, as one of the rights most clearly fitting into the group of civil and political rights, usually requires significant financial means to be fully implemented, given that organising fully free democratic elections comes at a significant cost. Similarly, the right to a free trial, a prominent civil right, requires organising and paying the cost of the entire judicial system.

⁸⁴ UN Committee on Economic Social and Cultural Rights, 'General Comment No. 3 on the nature of State parties' obligations', Contained in the UN Doc. E/1991/23, §2, available at: <http://www.refworld.org/docid/4538838e10.html>.

However, even when realising a right **progressively**, 'a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State party. Thus, for example, a State party in which any significant number of individuals is deprived of essential foodstuffs, essential primary health care, basic shelter and housing, or the most basic forms of education, is, *prima facie*, **'failing to discharge its obligations under the Covenant'**⁸⁵. Otherwise, the international obligations set up under such provisions would lose their *raison d'être*. By the same token, any assessment as to whether or not a State has discharged its minimum core obligation, must also take account of resource constraints applying within the country concerned⁸⁶.

Given that progressive realisation means that a right need not be fully implemented immediately, this might be interpreted as leaving a window of opportunity for States to improve, or deteriorate, the guarantee of enjoyment of certain rights, depending on the situation and their political priorities. To pre-empt this, the principle of non-retrogression was introduced to international human rights theory as an additional safeguard. The non-retrogression principle is enshrined into EU protection of fundamental rights through **Article 53 of the EU Charter, which stipulates that nothing 'shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application'**⁸⁷. **A retrogressive measure is one that directly, or indirectly, leads to backward movement in the enjoyment of the rights recognised in international law.** For example, to ensure progressive realisation and avoid retrogression, States must ensure that their policies and actions do not reduce access to social security benefits⁸⁸. Any **'deliberately retrogressive measures would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources'**⁸⁹.

The reality is, however, that a lack of resources can impede realisation of a specific right, and this is, at least to a certain extent, accepted in human rights law, but only if the State has demonstrated that **'every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, [its] minimum obligations'**⁹⁰. Usually, it is the economic, social and cultural rights that are negatively affected, as economic downturns place social protection systems under considerable strain⁹¹. Nonetheless, States must move expeditiously and effectively towards the goal of full enjoyment of a right⁹² and, whilst certain rights may have been affected by measures, those effects must not necessarily result in a violation of rights.

Member States' roles in protection

At the national level, Member States have, over the last 60 years, progressively established their own legislative, institutional and policy framework to turn fundamental rights into a

⁸⁵ UN ESCR Committee, 'General Comment No.3: The Nature of States Parties' Obligations', §10, available at: <http://www.refworld.org/docid/4538838e10.html>.

⁸⁶ UN ESCR Committee, 'General Comment No.3: The Nature of States Parties' Obligations', §10, available at: <http://www.refworld.org/docid/4538838e10.html>.

⁸⁷ EU Charter, Article 53.

⁸⁸ UNHCHR, 'Report on austerity measures and economic and social rights', UN Doc. E/2013/82, New York and Geneva, May 2013, p. 18, available at: http://www.un.org/ga/search/view_doc.asp?symbol=E/2013/82.

⁸⁹ UN ESCR Committee, 'General Comment No.3: The Nature of States Parties' Obligations', §9 available at: <http://www.refworld.org/docid/4538838e10.html>.

⁹⁰ UN ESCR Committee, 'General Comment No.3: The Nature of States Parties' Obligations', §10, available at: <http://www.refworld.org/docid/4538838e10.html>.

⁹¹ FRA, 'Protecting fundamental rights during the economic crisis', 2010, p. 11, available at: http://fra.europa.eu/sites/default/files/fra_uploads/1423-FRA-Working-paper-FR-during-crisis-Dec10_EN.pdf.

⁹² UN ESCR Committee, 'General Comment No. 14: The Right to the Highest Attainable Standard of Health', 11 August 2000, UN Doc. E/C.12/2000/4, available at: <http://www.refworld.org/docid/4538838d0.html>.

reality. As a starting point, most Member States firmly establish human rights within their Constitutions. They have also put a range of bodies in place, such as ombudspersons and equality bodies, to monitor violations of fundamental rights and, in some cases, to carry out investigations or prosecutions to assist in the development of policies and to promote fundamental rights.

At the same time, legislative and institutional action has been taken with respect to individual rights. For example, to guarantee the right to a fair trial, Member States have set up judicial systems which must comply with the key aspects of fair trial, such as independence of the judiciary, an open trial, access to a lawyer, interpretation where it is needed and sufficient time to prepare one's defence. Here too, the EU has taken a pivotal role in establishing many aspects of fair trial rights in EU Directives⁹³.

3.2. The rights protected

It would be difficult to make a catalogue of all the rights guaranteed by international, European and national instruments, and even harder to make a list of all of the measures undertaken in crisis-affected countries which have, in one way or another, affected the enjoyment of each of these rights. As the UN has warned, there were negative impacts of the global economic and financial crisis on economic and social development and on the full enjoyment of all human rights in all countries⁹⁴. However, given the limited scope of the present study, only the selected rights and the impact of the crisis on their enjoyment are scrutinised in detail.

Right to education

Certain expenditures remained stable, regardless of changing social, economic and demographic circumstances and regardless of their relatively large share in public spending⁹⁵. For example, the average expenditure on education in Member States, which in 2010 was more than 5% GDP⁹⁶ and seen as relatively high, remained relatively unchanged, in real terms⁹⁷. Nevertheless, in one third of OECD countries, spending on education fell as a result of the crisis⁹⁸. **Cuts in education subsidies and scholarships, school teachers' salaries, and schools budgets, affect the quality, accessibility and affordability of education,**

⁹³ E.g. Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:280:0001:0007:en:PDF>; Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:142:0001:0010:en:PDF>.

⁹⁴ UN HRC, 'The impact of the global economic and financial crises on the universal realization and effective enjoyment of human rights', UN doc. A/HRC/S-10/L.1, February 2009, available at: <http://www.ohchr.org/EN/HRBodies/HRC/SpecialSessions/Session10/Pages/10thSpecialSession.aspx>.

⁹⁵ EU Education, Audiovisual and Culture Executive Agency, 'Government Education Expenditure in the European Union during the Economic Crisis (2008-2011)', 2003.

⁹⁶ Eurostat, Expenditure on educational institutions (2005 and 2010), 2014, available at: [http://ec.europa.eu/eurostat/statistics-explained/index.php/File:Expenditure_on_educational_institutions_2005_and_2010_\(1\)_YB14.png](http://ec.europa.eu/eurostat/statistics-explained/index.php/File:Expenditure_on_educational_institutions_2005_and_2010_(1)_YB14.png).

⁹⁷ EU Education, Audiovisual and Culture Executive Agency, 'Government Education Expenditure in the European Union during the Economic Crisis (2008-2011)', 2003, available at: <http://eacea.ec.europa.eu/education/eurydice/focus-on/documents/155EN.pdf>.

⁹⁸ OECD, 'Education at a Glance 2013: OECD Indicators', p. 186, available at: https://www.google.be/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=OCB8QFjAA&url=ht tp%3A%2F%2Fwww.oecd.org%2Fedu%2Fag2013%2520%2528eng%2529--FINAL%252020%2520June%25202013.pdf&ei=76u_VLSdBIOrU5WugaAJ&usq=AFOjCNEgtl4jretBs-M0oDYnVASV2eophg&sig2=MagHZOCWUkDhXlyOnug6Dw&bvm=bv.83829542.d.d24.

which may also result in early school dropouts and subsequent long-term effects on the children concerned⁹⁹.

Nonetheless, in the ICESCR the right to education is defined as a universal entitlement to education, and this right is recognised as a right that includes the right to free, compulsory primary education for all, as well as an obligation to provide a system of secondary education. Secondary education does not necessarily have to be free, but it does have to be available and accessible to all. The material conditions of teaching staff should also be continuously improved¹⁰⁰. In addition, the right to education encompasses the obligation to combat discrimination at all levels of the educational system, to set minimum standards, and to improve the quality of education. As an empowerment right, education is the primary vehicle by which economically and socially marginalised adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities¹⁰¹. Education needs to be provided under the principles of availability, accessibility, acceptability and adaptability¹⁰².

The right to education is reaffirmed in the 1960 UNESCO Convention against Discrimination in Education, Article 10 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Articles 28 and 29 of the Convention on the Rights of the Child (CRC) and Article 24 of the Convention on the Rights of Persons with Disabilities (CRPD). Furthermore, it is also guaranteed by Article 2 of Protocol No. 1 to the European Convention on Human Rights (ECHR).

The EU Charter guarantees the right to education and access to vocational and continuing training, with the possibility to receive free compulsory education¹⁰³. In fact, the education budgets, in certain countries, have suffered severe cuts, which prompted warnings about the impact of such cuts on the equality of opportunities¹⁰⁴.

Right to healthcare

Even before the crisis, there had been a need for structural changes in the healthcare sector. The outbreak of the crisis has made the reforms in this sector more urgent, with the premise (and the promise) that the reforms will bring a better service at a cheaper price. In

⁹⁹ Council of Europe Commissioner on Human Rights, 'Report following his visit to Spain', CommDH(2013)18, pp. 9-10, available at:

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2389885&SecMode=1&DocId=2077824&Usage=2>; Report following his visit to Estonia, [CommDH\(2013\)12](https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2134231&SecMode=1&DocId=1919090&Usage=2), p. 4; 'Report following his visit to Portugal', CommDH(2012)22, pp. 6-7., available at: <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2134231&SecMode=1&DocId=1919090&Usage=2>, as per Council of Europe Commissioner on Human Rights, 'Safeguarding human rights at times of economic crisis', 2013, p. 20, available at: <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2664103&SecMode=1&DocId=2215366&Usage=2>.

¹⁰⁰ ICESCR, Article 13.

¹⁰¹ UN ESCR Committee, 'General Comment No. 13: The right to education', UN Doc. E/C.12/1999/10, 1999, §1, available at: <http://www1.umn.edu/humanrts/gencomm/escrcom13.htm>.

¹⁰² UN ESCR Committee, 'General Comment No. 13: The right to education', UN Doc. E/C.12/1999/10, 1999, §6, available at: <http://www1.umn.edu/humanrts/gencomm/escrcom13.htm>.

¹⁰³ The EU Charter, Article 14.

¹⁰⁴ Council of Europe Commissioner on Human Rights, 'Report following his visit to Spain', CommDH(2013)18, p. 2, available at:

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2389885&SecMode=1&DocId=2077824&Usage=2>

the healthcare sector, the crisis was seen only as the trigger for reforms already long overdue – the outcome, however, not necessarily resulting in better healthcare¹⁰⁵.

The right to health does not guarantee the right to be healthy. However, it does contain different freedoms and entitlements, where the entitlements represent the right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable standard of health and, is to be understood as the right to have access to health services.

Understood as such, the right to healthcare is guaranteed by Article 25 of the UDHR, Article 12 of the ICESCR, Article 12 the Convention on the Elimination of all Forms of **Discrimination against Women (the 'CEDAW')**, **Article 25 of the Convention on the Right of Persons with Disabilities (the 'CRPD')**, **Article 24 of the Convention on the Rights of the Child (the 'CRC')** and Article 11 of both the European Social Charter and the Revised European Social Charter. It is also repeated in the preamble of the Constitution of the World Health Organisation.

Right to work

Unlike the above-mentioned rights – the enjoyment of which depends to a lesser or a greater extent on public giving, the crisis also had an effect on rights which largely depend on the market. For example, the right to work, with the exception of employment in the public sector, depends on the demand for workers by the economy, even though the market depends on Member State labour policies and legislation.

There is no blanket guarantee in international law of the right to work – if it is understood as the right to have and maintain gainful employment. Article 6 of the ICESCR recognises the right to work in the sense of the opportunity of everyone to gain their living by freely choosing or accepting work. Also, the right to work is in the core of the activities of the ILO. A number of conventions have been adopted within its framework to protect and improve the enjoyment of the right to work¹⁰⁶.

Similarly, the EU Charter guarantees the right to engage in work and to pursue a freely-chosen or accepted occupation¹⁰⁷, which corresponds to the guarantee in the ICESCR. The EU Charter, furthermore, guarantees a free placement service for everyone¹⁰⁸, protection from unjustified dismissal¹⁰⁹, and the right to fair and just working conditions¹¹⁰.

Increased unemployment was one of the first consequences of the crisis and this right was immediately affected. Interventions were aimed mostly at accommodating two different demands: facilitating flexibility for employers in the particular circumstances in which the economy had to respond to the changed situation in the global market caused by the crisis;

¹⁰⁵ See e.g. A. Kentikelenis et al., 'Greece's health crisis: from austerity to denialism', *The Lancet*, vol. 383, 2014, available at: <http://www.enetenglish.gr/resources/article-files/piis0140673613622916.pdf>. See also the analysis of the right to healthcare in the Section 5 of the present study.

¹⁰⁶ For example: Hours of Work (Industry) Convention, 1919 (No. 1), Unemployment Convention, 1919 (No. 2), Forced Labour Convention, 1930 (No. 29), Equal Remuneration Convention, 1949 (No. 100), Discrimination (Employment and Occupation) Convention, 1958 (No. 111), Termination of Employment Convention, 1982 (No. 158), Domestic Workers Convention, 2011 (No 189), among many others. For a full list of ILO conventions, see ILO Conventions, available at: <http://www.ilo.org/dyn/normlex/en/f?p=1000:12000:0>.

¹⁰⁷ EU Charter, Article 15(1).

¹⁰⁸ EU Charter, Article 29.

¹⁰⁹ EU Charter, Article 30.

¹¹⁰ EU Charter, Article 31.

facilitating new employment opportunities at a time when unemployment rates grew at an alarming pace.

Right to a pension

With 12-13% GDP spent on pensions in the EU¹¹¹ (17% in the OECD countries¹¹²), an ageing population and the constant increase in life expectancy, pensions have been high on the agenda for reform, even before and, unrelated to the crisis¹¹³. Originally, interventions regarding pensions were positive and at the outbreak of the crisis, pensioners had been largely spared from benefit cuts, and sometimes, even saw their public pension benefits increased as part of economic stimulus programmes. However, by 2013, given their large incidence in public spending, and as the crisis developed, pensions became a target for consolidation programmes¹¹⁴. Interventions regarding pensions were seen as difficult, as they either postponed the retirement age – which had twofold consequences, i.e. it made people stay longer in the workforce and reduced the number of employment opportunities, or simply reduced the amount of pensions to be received.

Although there is no internationally guaranteed right to a pension, pensions, as provided by applicable legislation, have been protected by international and national legislation as part of the right to property. Having developed the doctrine of pensions as acquired rights, the ECtHR has observed pensions ‘through the lens’ of the right to property as guaranteed by Article 1 of Protocol No. 1 to the ECHR¹¹⁵.

With this understanding, Article 17 of the EU Charter guarantees the right for everyone ‘to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss’.

Therefore, not surprisingly the measures interfering with pensions were seen as directly impacting individual acquired rights and were met with resistance, criticism, and were even subject to successful national¹¹⁶ and international litigation¹¹⁷.

¹¹¹ Eurostat, ‘Expenditure on pensions’, 2001-2012, available at: <http://ec.europa.eu/eurostat/tgm/table.do?tab=table&init=1&language=en&pcode=tps00103&plugin=1>.

¹¹² OECD, ‘Pensions at a Glance 2013’, 2013, p. 9, available at: <http://www.oecd.org/pensions/public-pensions/OECDPensionsAtAGlance2013.pdf>.

¹¹³ OECD, ‘Pensions at a Glance 2013’, 2013, p. 18, available at: <http://www.oecd.org/pensions/public-pensions/OECDPensionsAtAGlance2013.pdf>.

¹¹⁴ OECD, ‘Pensions at a Glance 2013’, 2013, p. 9, available at: <http://www.oecd.org/pensions/public-pensions/OECDPensionsAtAGlance2013.pdf>.

¹¹⁵ See e.g. ECtHR *Gaygusuz v. Austria*, case no. 17371/90, judgment of 16 September 1996, §41, available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58060>. For a full list of references to the regime of ‘acquired rights’ see ECtHR *Grudić v. Serbia*, case no. 31925/08, judgment of 17 April 2012, §72, available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-110378>. For a broader list of references on ECtHR case-law on pensions, see also Carss-Frisk M., ‘A guide to the implementation of article 1 of Protocol No. 1 to the European Convention on Human Rights’, Human Rights Handbooks, No. 4, Council of Europe 2003, available at: <http://www.echr.coe.int/LibraryDocs/DG2/HRHAND/DG2-EN-HRHAND-04%282003%29.pdf> or Grgić A., Mataga Z., Longar M and Vilfan A., ‘The right to property under the European Convention on Human Rights’, Human rights handbooks, No. 10, Council of Europe 2007, available at: <http://www.echr.coe.int/LibraryDocs/DG2/HRHAND/DG2-EN-HRHAND-10%282007%29.pdf>.

¹¹⁶ For example, in a number of decisions in 2013, the Constitutional Court of Portugal found certain cuts in pensions to be unconstitutional. For a discussion on decisions of the Portuguese Constitutional Court, see e.g. Dimopoulos A., ‘PIGS and Pearls: State of Economic Emergency, Right to Resistance and Constitutional Review in the Context of the Eurozone Crisis’, ICL Journal, Vol 7, Notes 501, 4/2013, available at: http://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID2333462_code2115406.pdf?abstractid=2333462&mirid=3.

¹¹⁷ Thus, the ECSR came out with a number of decisions evaluating Greek measures imposed on pensioners. See e.g. *Panhellenic Federation of Pensioners and the Public Electricity Corporation (POS-DEI) v. Greece*, complaint no.

Access to justice

Justice systems came under the spotlight – even though spending on justice systems is comparably lower to, for example, spending on education¹¹⁸. However, given the utmost importance of the proper functioning of the justice system for democracy and the rule of law, any interference with the justice system merits close scrutiny, and such interventions have, thus, been closely monitored during the crisis.

Procedural rights, although not access to justice itself, have been protected by numerous instruments. Article 10 of the UDHR, Article 14 of the ICCPR, the Geneva Conventions and Article 6 of the ECHR guarantee the right to fair trial, which is seen as the corner stone for the access to justice. However, only with the Lisbon Treaty has the right of access to justice been finally recognised as such, although limiting it to matters related to the recognition of judgements. The EU Charter has subsequently referred specifically to access to justice, reaffirming it as a basic concept of the procedural rights of individuals¹¹⁹. Later on, other instruments have adopted wording specifically towards the protection of access to justice. Thus, Article 13 of the CRPD protects effective access to justice for people with disabilities.

Despite the fact that the right of access to justice was not initially guaranteed in international human rights instruments, it has been given due attention by international policy makers. Thus, for example, the CoE Committee of Ministers adopted the recommendation on facilitating access to justice in 1981¹²⁰. Furthermore, the monitoring mechanisms have distinguished this right from other rights and insisted on strict adherence thereto. Thus, the ECtHR has developed a significant body of case-law, based on the premise that the right to a fair trial assumes, per se, the right of access to court¹²¹, and consequently, the right of access to justice¹²².

Freedoms of expression and assembly

Furthermore, the pressure of austerity measures sometimes served as cause for protests, or flared-up reactions from the public. In certain situations, the protests spiralled into violent exchanges between the protesters and the police, causing material damage, casualties¹²³ and, in a few of the most severe incidents, even the deaths of protesters¹²⁴ and bystanders¹²⁵.

79/2012, decision on the merits of 7 December 2012, available at: https://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/CC79Merits_en.pdf.

¹¹⁸ There is no easily comparable data available to express the expenditure on the justice systems from the GDP. However, according to the CEPEJ, the total public expenditure (expressed as a percentage allocated in the national budget) for justice systems (including court system, legal aid, public prosecution services, prison system and probation services) amounted to between 0.14% in the UK (without Scotland) and 1.00% in Slovenia. Dubois E., Schurrer C. and Velicogna M., 'The functioning of judicial systems and the situation of the economy in the European Union Member States', CEPEJ Complied Report 2013, available at: http://ec.europa.eu/justice/effective-justice/files/cepej_study_justice_scoreboard_en.pdf.

¹¹⁹ EU Charter, Article 47.

¹²⁰ CoE Committee of Ministers, Recommendation to Member States on Measures Facilitating Access to Justice, No. R(81) 7, May 1981, available at: <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=599788&SecMode=1&DocId=671776&Usage=2>.

¹²¹ See e.g. ECtHR, *Burdov v. Russia*, no. 59498/00, judgment of 7 May 2002, available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-60449>.

¹²² Thus, for example, the ECtHR finds that it is the responsibility of the state to ensure the enjoyment of access to justice and the independence of the legal profession. See ECtHR, *Staroszczyk v. Poland*, case no. 59519/00, judgment of 22 March 2007, §133, available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-79879>.

¹²³ See e.g. Spiegel Online International, 'European Day of Action': Anti-Austerity Protests Spark Violence, 12 November 2012, available at: <http://www.spiegel.de/international/europe/anti-austerity-protests-spark-violence-in-european-countries-a-867316.html>.

Freedoms of expression and assembly are guaranteed by Articles 20 and 23 of the UDHR, Articles 21 and 22 of the ICCPR, Article 8 of the IESCR, Articles 10 and 11 of the ECHR and Articles 5 of both the ESC and the RESC. Article 11 of the EU Charter guarantees the right of freedom of expression and information, while Article 12 provides for the protection of freedom of assembly and association. Even though it can hardly be said that the *stricto sensu* austerity measures have directly interfered with the freedom of assembly or expression, the reaction of the authorities to these protests sometimes brought into question the enjoyment of those freedoms by the general public, and austerity has often been discussed within this context too.

Other rights

Other interventions made to redress the turmoil in the global economy, directly, or indirectly, affected other rights. Apart from the rights which were, to various extents, affected by different measures introduced in all of the countries significantly affected by the crisis, there have been others which were only characteristic of one or a few Member States. As noted above, austerity measures provoked different reactions, depending on how strongly a Member State was hit by the crisis, as well as various other individual **characteristics of each Member State's economy and political system. Thus, for example, in Cyprus, there has been a lot of discussion about the so-called 'haircut of deposits'**¹²⁶ and the consequent concerns about interferences with the right to property of the individuals affected. In Ireland, the initiative to introduce water meters caused heated debate about the possible violation of the right to water (assuming that such a right is indeed internationally recognised). In Belgium, the issue of the right to housing was subject to an elaborate debate.

The following sections provide a detailed overview of how austerity has affected these selected rights.

¹²⁴ See e.g. Businessweek, '1 dead in Athens demonstration clashes', 20 October 2011, available at: <http://www.businessweek.com/ap/financialnews/D9QG3LKG2.htm>.

¹²⁵ See e.g. BBC, 'Three dead as Greece protest turns violent', 5 May 2010, available at: <http://news.bbc.co.uk/2/hi/8661385.stm>.

¹²⁶ The term 'haircuts' to refer to expropriation of deposits was broadly accepted by financial commentators. See e.g. Stothard M., 'Bank of Cyprus haircut could reach 60%', Financial Times, March 2013, available at: <http://www.ft.com/intl/cms/s/0/4a1bb1d6-9926-11e2-af84-00144feabdc0.html#axzz3OEgtwZr2>.

4. IMPACT OF AUSTERITY MEASURES ON THE RIGHT TO EDUCATION

KEY FINDINGS

- The study focuses on observing the impact of the crisis on the right to compulsory education, which is guaranteed in all of the observed Member States.
- Out of the seven observed Member States, only Belgium has not undertaken any significant interventions with respect to the right to education.
- Main measures included a reduction in the number of schools, which was achieved by mergers or closures; reductions in the number of teachers, an increase of the student-to-teacher ratio; the reduction of administrative and other school-related costs.
- Some measures resulted in reducing the services provided to children in vulnerable situations, such as children with disabilities, Roma children or children of migrants.
- The impacts of measures cannot yet be fully evaluated, but include a danger to the **overall quality of education and children's success at school; an increase in unemployed workers in education; reduced availability of services such as transport to school; deterioration of general conditions in classrooms, such as cleaning and heating.**
- Children with disabilities, Roma and Traveller children, as well as children of migrants, appear to have been disproportionately affected by the measures imposed.

4.1. Guarantee of the right to education

"Education is both a human right in itself and an indispensable means of realizing other human rights. As an empowerment right, education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities. Education has a vital role in empowering women, safeguarding children from exploitative and hazardous labour and sexual exploitation, promoting human rights and democracy, protecting the environment, and controlling population growth. Increasingly, education is recognised as one of the best financial investments States can make. But the importance of education is not just practical: a well-educated, enlightened and active mind, able to wander freely and widely, is one of the joys and rewards of human existence¹²⁷".

The right to education is guaranteed by several legal instruments at EU and international levels. In the **EU Charter** on Fundamental Rights, **Article 14** guarantees the right to education, including compulsory education.

The right, either in its abstract entirety, or certain particular aspects of it, is also guaranteed by the Universal Declaration of Human Rights (UDHR); the International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic, Social and Cultural Rights (ICESCR); the European Convention on Human Rights (ECHR); the European Social Charter (ESC) and the revised Charter (RESC); the Convention on the Rights of the Child (CRC) and the Convention on the Rights of Persons with Disabilities

¹²⁷ UN CESCR, 'General Comment no. 13: The right to education', UN Doc. E/C.12/1999/10, December 1999, available at: http://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/CESCR_General_Comment_13_en.pdf.

(CRPD). Furthermore, several UNESCO instruments deal with the right to education, starting with the 1960 Convention against Discrimination in Education (CADE). Recognising the importance of education, the UN General Assembly identified the achievement of universal primary education by the year 2015, meaning the completion of a full course of primary education by all boys and girls, is one of the Millennium Development Goals¹²⁸.

The right to education can be interpreted broadly. The focus of the present study is the right to education understood as the right to compulsory education, which most Member States guarantee for children of a certain age.

The right to compulsory education, as protected in international frameworks, is **unconditional, i.e. every child has the right to education, and the State and the child's parents have an obligation to make sure the child participates in education.** This means that schools are not allowed to refuse enrolment of non-nationals, in particular, those children who reside in Member States without valid residence permits¹²⁹. Furthermore, compulsory education should be free¹³⁰ of any direct costs, while indirect costs need to be imposed with caution¹³¹.

The right to compulsory education is guaranteed in all of the observed Member States, and lasts from the age of five (in Greece) or six, and ends between the ages of 15 (in Greece and Cyprus) and 18 (in Belgium and Portugal). However, it is not completely free-of-charge – it is possible that the authorities may impose a charge even for mandatory activities¹³².

4.2. Overview of the measures affecting the right to education

In the Troika countries, MoUs repeatedly required a reduction in expenditure for education¹³³. Specific interventions depended upon the situation in each Member State, but have shared characteristics that focus on increasing the effectiveness and efficiency of each educational system. In non-Troika countries, the trends were different. In Italy, restrictive measures were introduced – sometimes relying on international and EU commitments to

¹²⁸ UN General Assembly, Resolution no. 55/2: United Nations Millennium Declaration, UN Doc. A/Res/55/2, September 2000, §19, available at: <http://www.un.org/millennium/declaration/ares552e.htm>. The universal primary education has remained one of the millennium development goals in 2015.

¹²⁹ For more information see e.g. Platform on International Co-operation on Undocumented Migrants, 'Children First and Foremost: a guide to realising the rights of children and families in an irregular migration situation', 2013, available at: <http://picum.org/picum.org/uploads/publication/Children%20First%20and%20Foremost.pdf>.

¹³⁰ CRC, Article 28.

¹³¹ UN CESCR, 'General Comment no. 11: Plans of action for primary education', UN Doc. E/C.12/1999/4, May 1999, §7, available at: http://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/CESCR_General_Comment_11_en.pdf.

¹³² E.g. in Belgium schools charge on the average 120 euros per year for various activities. See e.g. Ligue des Familles, 'School fees: Survey of the Ligue des familles (*Frais scolaires: l'enquête de la Ligue des familles*)', August 2013, available at: <https://www.laligue.be/association/communiqu/2013-08-13-cp-frais-scolaires-l-enquete-de-la-ligue-des-familles>. For a broader discussion on free education in Belgium see also Elberhoumi, M., 'The free education: a forgotten promise, a trampled legal principle (*La gratuité de l'enseignement : une promesse oubliée, un principe juridique bafoué*)', Forum bruxellois de lutte contre la pauvreté, Pauvreté n°1/2013, 2013.

¹³³ Thus, for example, in Greece the necessity for a reform of the educational system was raised already in the First Economic Adjustment Programme (available at: http://ec.europa.eu/economy_finance/publications/occasional_paper/2010/pdf/ocp61_en.pdf), only to be reinforced by request for specific measures in the Second (available at: http://ec.europa.eu/economy_finance/publications/occasional_paper/2010/pdf/ocp72_en.pdf) and Third (available at: http://ec.europa.eu/economy_finance/publications/occasional_paper/2011/pdf/ocp77_en.pdf) Reviews of the Economic Adjustment Programme for Greece. Similarly, already in the original Economic Adjustment Programme for Cyprus (available at: http://ec.europa.eu/economy_finance/publications/occasional_paper/2013/pdf/ocp149_en.pdf), a demand was expressed for the reduction of the number of teachers, 'the elimination of mentoring components for pre-service and in-service training for newly appointed teachers and the reduction of the cost of afternoon and evening programmes'.

stabilise public financing. In Belgium, only a few restrictive measures were introduced. At the same time, where in some other areas, e.g. the student-to-teacher ratio, other Member States more or less significantly cut the spending – in Belgium it was increased.

4.2.1. Mergers and closures of schools

Mergers of schools have been recorded in three of the observed Member States: **Cyprus**, **Greece** and **Italy**. However, not all mergers may be attributed to the crisis and cuts in costs. Thus, in Cyprus, the plans for the merger of schools were in place even before the crisis and some schools were scheduled to merge because of the decrease in the number of students, regardless of the crisis. Similarly, plans for the merger of classes which fell below a minimum number of students also existed in Cyprus before the crisis, but had, nevertheless, not been implemented before the crisis hit the country.

The scope of the mergers was different in the three Member States. In Cyprus, on average, two schools a year are merged with others – with the total number of schools decreasing from 347 in 2008 to 338 in 2013. In Italy, on the other hand, the merger of schools primarily affected certain areas, such as the island regions of Sicily and Sardinia, where two-thirds of schools were merged. School mergers in Greece were more substantial, i.e. from 1998-2012, the number of school units in primary schools dropped from 6,431 to 4,716. However, not all the school closures can be attributed to the crisis, as in 2008, the number had already fallen to 5,496. Nevertheless, 780 school units in primary education were closed down in the period of crisis, with plans to continue with the mergers of another 231 units in the school year 2014/15.

4.2.2. Costs of staff in education

In all of the observed Member States, except Belgium, there have been cuts in the costs of staff in education. These cuts were obtained through a combination of measures including: the **reduction of salaries** and a reduction of the number of the staff, either by **dismissals** or a **freeze on new employment**. The **number of students per class** also increased, while the teacher-student ratio decreased in all countries¹³⁴, apart from Belgium, where the number of students per class was reduced in 2011. The salaries, as well as other benefits for teachers, were affected together with salaries and other benefits of civil servants in general – which is discussed in more detail in Section 6 of the study. The number of **working hours** of teachers also increased in Italy, Portugal and Spain, while in Cyprus **preparatory hours** for teachers were abolished.

Reductions for the engagement of substitute and replacement teachers were introduced in Ireland and Spain, thus restricting the possibility of engaging replacement teachers.

4.2.3. Other costs

Apart from staffing costs, some administrative costs were reduced. In Italy, the **technical and auxiliary staff** at schools was reduced by 17%. In Greece, the position of **school guards** was abolished, while in Portugal the **new management scheme** was introduced in schools. The new management style, that was introduced, is based on creating school groups and giving more executive powers to the headmasters, while at the same time, decreasing democratic management mechanisms. In Cyprus and Greece, the **operational**

¹³⁴ Meaning that the number of teachers per student decreased, while the number of students per teacher increased.

costs of schools were significantly reduced, while in Spain, a similar general reduction in the costs of all of the organisational structures of State administration, including education, was imposed. Thus, in Cyprus, the budget of the school secretariat which covers, e.g. building maintenance, consumables, cleaning expenses, secretarial services, stationery, equipment and books, has reduced by 20% in 2013-2014 compared to the previous year¹³⁵. Furthermore, the budget for school infrastructure maintenance was cut.

Prior to the crisis, Cyprus provided free **transport** for children from rural areas and pupils attending technical schools; this now needs to be paid. In Ireland, the cost of transport increased, while the rural transport co-ordination service was removed. Similarly, Ireland abolished, amongst others, **grants for school books** and funding for poorer children, whereas in Spain, a total decrease of 45% was recorded in the provision of scholarships for the purchase of schoolbooks. Grants for the purchase of **clothing and footwear** were also reduced in Ireland. In Belgium **school allowances** aimed at families in financial difficulty were reduced by 15% in 2013, and an additional 15% in 2014. In Spain, **subsidies for student meals** were reduced by 30-50% in some geographic areas, while in Greece, reductions in school budgets jeopardised the schools' abilities to bear **essential operational costs**, such as heating.

4.2.4. Other measures

In Portugal, the **non-curricular subject areas**, such as supervised studies and projects, were abolished. In Ireland, grants for the **transitional year**, an optional one-year programme focusing on non-academic subjects, as well as for physics and chemistry were withdrawn. In Spain, a plan was made to abolish **mandatory education for citizenship and human rights**.

4.2.5. Vulnerable groups of students

In Portugal, the number of **children with disabilities** in education increased, while at the same time, the budget for their education decreased. In Cyprus, Greek language classes which were mostly aimed at **migrant children** were reduced. In Ireland, funding for **Traveller children** and children from disadvantaged and marginalised groups has been affected. At the same time, the number of language-support teachers was limited.

4.3. Measures taken in the alleviation of austerity measures affecting the right to education

Specific measures aimed at alleviating the negative effects of the crisis on the right to education were identified in only two of the Member States observed – **Cyprus** and **Ireland**.

In Cyprus, the Ministry of Education adopted an initiative, co-financed by the Ministry and the private sector, to provide **free breakfasts to the poorest children** – which is provided at schools to mitigate growing difficulties faced by those children, including possibly, restrictions in the provision of free transport. Furthermore, since the beginning of the crisis, the inspectors from the Ministry have warned schools not to burden parents with costs for extracurricular activities. In Ireland, a scheme for the employment of additional

¹³⁵ Stakeholder interview, teacher in public education, September 2014.

teachers was introduced to ensure maintenance of the student-teacher ratio. Measures, directed towards helping families bear the **cost of school books**, were also introduced. Special measures ensured the extension of the national **educational psychological service** to all primary and secondary schools.

4.4. Impact of the measures affecting the right to education

When understood as a financial investment, education is the one field on which many other **future developments depend**. The **right to work or to choose one's occupation, the right to vote, and the freedom of expression, assembly and association**, all depend, to a large extent, on the education provided beforehand¹³⁶. This is why any intervention regarding the right to education may have multiplied effects in the future, and it is too soon to be able to fully evaluate the impacts of such measures. That being said, an overview of impacts may be seen in different areas.

4.4.1. Overall system of education

It has been noted in Greece that, following the reforms, the system of primary and secondary education has been significantly **rationalised** towards ensuring its overall actuarial balance and fiscal sustainability. In all countries, except Belgium, the **student-to-teacher ratio increased**. This is likely to seriously damage the education service for children and will have a significant impact on those with slower learning abilities, as they will receive less individual attention¹³⁷. Furthermore, concerns were raised that the budgetary interventions may jeopardise access to quality education for all children¹³⁸.

4.4.2. Provision of services at schools

Due to cuts in administrative budgets, in some areas in Italy, it is reported that in some schools the **minimum standards of hygiene** will suffer, as the funds available will not suffice to keep the schools clean. In Greece, schools have been facing difficulties to meet basic student needs, such as **providing heating**. In Cyprus, a number of children referred to a **school psychologist** increased, while the number of psychologists remained inadequate.

4.4.3. Student success in education

The **decline in equality in educational results** in Spain could be interpreted as an indirect consequence of austerity measures¹³⁹. It is expected that the withdrawal of funding for schoolbooks may mean that some children will not have **correct materials to study** and risk falling behind at school.

¹³⁶ EU Network of Independent Experts on Fundamental Rights, 'Commentary on the Charter of Fundamental Rights of the European Union: Article 14. Right to Education', June 2006, available at: <https://infoportal.fra.europa.eu/InfoPortal/infobaseDownloadFile.do?id=302851>.

¹³⁷ Barnardos, '[Written Out Written Off: Failure to Invest in education deprives children of their potential](#)', May 2009.

¹³⁸ CoE Commissioner, 'Report following his visit to Spain', CommDH(2013)18, October 2013, p. 2, available at: <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2389885&SecMode=1&DocId=2077824&Usage=2>.

¹³⁹ CoE Commissioner, 'Report following his visit to Spain', CommDH(2013)18, October 2013, p. 9, available at: <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2389885&SecMode=1&DocId=2077824&Usage=2>.

In Italy, school **drop-out rates** have decreased in the past few years, but nevertheless, remain quite high¹⁴⁰. A study shows that, apart from the 'traditional' causes for dropping-out of school – which are linked to social deprivation, new ones are emerging, e.g. a sense that studying and obtaining educational qualifications is not rewarded¹⁴¹. In Ireland, even though young people are more likely to complete secondary education than in other OECD countries, in reality, there is a high level of early school leaving concentrated in low-income communities¹⁴². In Portugal the drop-out and failure rates have increased¹⁴³.

4.4.4. Employment rate and working conditions of teachers

In Portugal an increase of 115% in the number of **unemployed teachers** was recorded – due to redundancies at schools, in particular, regarding the withdrawal of non-curricular programmes. Similarly, in Spain, thousands of teachers were left unemployed¹⁴⁴. In Greece, in 2014, it was estimated that the schools were short of almost 12,000 teachers in primary and secondary education and, by November 2014, they still lacked 1,100 teachers because of the absence of funds¹⁴⁵.

Teachers have to cope with **larger classes** and are forced to **work longer hours** in Spain and Portugal, with **less time to prepare** for class in Cyprus.

4.4.5. Vulnerable groups of students

Due to school mergers in Greece, some children experience difficulties in getting to and from school. This particularly affects **Roma** children. Similarly, **Traveller children** in Ireland are faced with difficulties in enrolling at the nearest school, and consequently, difficulties in being granted benefits for transport to school.

Immigrant children have been affected by cuts in the provision of language classes in Cyprus and Ireland.

Children with disabilities have suffered negative consequences of austerity measures in a number of countries. The budget cuts have significantly affected both **inclusive education**, i.e. enabling children with disabilities to join their peers in mainstream schools and providing appropriate assistance, and **education in special schools**, i.e. schools

¹⁴⁰ In Italy, the school drop-out rate was 17% in 2013 – down from 18.2% in 2011, but still significantly higher than the EU average of 12%. See Istat, 'Fair and Sustainable Wellbeing Report 2014' (*Rapporto Bes 2014*), 26 June 2014, available at: <http://www.istat.it/it/archivio/126613>.

¹⁴¹ ISFOL, 'The dynamics of the dispersion training: risk analysis to the reactivation of support networks' (*Le dinamiche della dispersione formativa: dall'analisi dei percorsi di rischio alla riattivazione delle reti di supporto*), 2012, available at: <http://bw5.cilea.it/bw5ne2/opac.aspx?web=ISFL&opac=Default&ids=18674>.

¹⁴² Children's Rights Alliance, 'Report Card 2014', 2014, p. 18, available at: http://childrensrights.ie/sites/default/files/submissions_reports/files/RC2014-2Education.pdf.

¹⁴³ CoE Commissioner, 'Report following his visit to Portugal', CommDH(2012)22, July 2012, p. 2, available at: <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2134231&SecMode=1&DocId=1919090&Usage=2>. These rates refer to the percentage of students who either leave school or cannot be allowed to progress to the following school year, in relation to the overall number of enrolled students; the numbers are considered a warning sign about the success of the education system and have been growing.

¹⁴⁴ Cañadell R., 'The destruction of public education in Spain', in Jones K. ed., *Education and Europe: the Politics of Austerity*, Radicaledbooks, 2013, p. 39, available at: <http://radicaledbks.files.wordpress.com/2013/09/education-in-europe.pdf>.

¹⁴⁵ To Vima Newspaper, 'Points instead of salary for volunteering teachers considered by Loverdos' (*Μόρια αντί για μισθό σε εθελοντές εκπαιδευτικούς μελετά ο Λοβέρδος*), November 2014, available at: <http://www.tovima.gr/society/article/?aid=648324>.

which provide education exclusively for children with disabilities in a segregated setting. In Portugal, the foreseen closure of special schools and the inclusion of all children with disabilities in mainstream education has reportedly been a failure due to late approvals and drastic budget cuts¹⁴⁶. In Ireland, an increasing number of children with disabilities are being moved back from mainstream education to special schools, as schools do not have the resources to provide them with the support they need¹⁴⁷. In Belgium (Flanders) cuts have been reported in educational support services for children with disabilities¹⁴⁸. In Greece, 38% of the special nurseries and 23% of both primary and secondary special schools could not operate due to the lack of financial means. This is worrying, given that an estimated 180,000 children with disabilities are currently excluded from education in Greece¹⁴⁹, while those participating in education experience various other difficulties¹⁵⁰.

In Spain, reductions in meal subsidies have had a negative impact on the nutrition of **children from poor families**. Children from such families are also disproportionately affected by the withdrawal of scholarships.

¹⁴⁶ EFC, 'Assessing the impact of European governments' austerity plans on the rights of people with disabilities', October 2012, p. 68-69, available at:

http://www.efc.be/programmes_services/resources/Documents/Austerity%20European%20Report_FINAL.pdf.

¹⁴⁷ EFC, 'Assessing the impact of European governments' austerity plans on the rights of people with disabilities', October 2012, available at:

http://www.efc.be/programmes_services/resources/Documents/Austerity%20European%20Report_FINAL.pdf.

¹⁴⁸ EFC, 'Assessing the impact of European governments' austerity plans on the rights of people with disabilities', October 2012, available at:

http://www.efc.be/programmes_services/resources/Documents/Austerity%20European%20Report_FINAL.pdf.

¹⁴⁹ EFC, 'Assessing the impact of European governments' austerity plans on the rights of people with disabilities', October 2012, available at:

http://www.efc.be/programmes_services/resources/Documents/Austerity%20European%20Report_FINAL.pdf.

¹⁵⁰ Such as delays in the commencement of the school year for special schools; staff shortages in special schools or general schools which children with disabilities attend; delays in the provision of the additional educational support etc. See e.g. Greek Ombudsman, Annual Report 2013 (in Greek), p. 87, available at: <http://www.synigoros.gr/resources/docs/08-oikogeneia.pdf>.

5. IMPACT OF AUSTERITY MEASURES ON THE RIGHT TO HEALTHCARE

KEY FINDINGS

- The study focuses on examining the impacts of austerity measures on access to healthcare in the observed Member States.
- All of the observed Member States introduced measures affecting access to healthcare. However, Belgium was the only Member State which introduced exclusive measures to alleviate hardships without interventions that removed services.
- In Greece and Cyprus, massive reforms to the healthcare systems were expected, whereas in other countries, for example Portugal, the interventions were aimed at only parts of the system.
- Other measures were directed towards: restricting access to healthcare; introducing or increasing participation fees; reorganising hospitals and healthcare providers; reducing salaries and freezing the employment of staff; interventions into the costs of drugs and other services; administrative reforms.
- In some Member States, a few measures were introduced to alleviate the burden of the newly-introduced restrictions.
- The impacts of measures were seen in: reduced access to healthcare; additional financial burden for citizens; the reduction in number of medical staff and facilities; increased waiting times for appointments and surgeries; resorting to alternatives to public health care (such as private services or NGO run services); increased unmet medical needs; decreased preventive and protective care; changes in the pharmaceuticals market (including shortages in supplies and decreased prices).
- Poor and homeless people, older people, people with disabilities and their families, women and undocumented migrants, are among the groups which were disproportionately affected by the measures imposed.

5.1. Guarantee of the right to healthcare

"In relation to the conclusion of other international agreements, States parties should take steps to ensure that these instruments do not adversely impact upon the right to health. Similarly, States parties have an obligation to ensure that their actions as members of international organizations take due account of the right to health. Accordingly, States parties which are members of international financial institutions, notably the International Monetary Fund, the World Bank, and regional development banks, should pay greater attention to the protection of the right to health in influencing the lending policies, credit agreements and international measures of these institutions¹⁵¹."

The right to health does not mean the right to be healthy, but contains different freedoms and entitlements, where the entitlements represent the right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable

¹⁵¹ The UN Committee on Economic, Social and Cultural Rights, General Comment No. 14: The right to the highest attainable standard of health, UN Doc. E/C.12/2000/4, §39, available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4sIQ6QSmIBEDzFEovLCuW1AVC1NkPsgUedPIF1vfPMJ2c7ey6PAz2qaojTzDJmC0y%2b9t%2bsAtGDNzdEqA6SuP2rOw%2f6sVBGTpvTSCbiOr4XVFqhOY65auTFbQRPWN Dxl>.

standard of health. Nonetheless, a line must be drawn between the right to health and the **right to healthcare. The right to health is broader and means that 'Governments must generate conditions in which everyone can be as healthy as possible'**¹⁵². This entails ensuring the availability of health services, healthy and safe working conditions, adequate housing and nutritious food. The right to healthcare is limited only to the first component – the right to have access to health services.

Understood as such, the right to healthcare is guaranteed by many international instruments, starting with Article 25 of the UDHR where it is referred to as the right to medical care – in the context of the right to health and well-being. It is also protected by Article 12 of the ICESCR which guarantees the right to the highest available standard of mental and physical health, achieved by means of, inter alia, the creation of conditions which would ensure medical service and medical attention in the event of sickness. It is, furthermore, guaranteed by Article 12 of the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), Article 25 of the Convention on the Rights of Persons with Disabilities (CRPD), Article 24 of the Convention on the Rights of the Child (CRC) and Article 11 of both the European Social Charter and the Revised European Social Charter. It is also repeated in the preamble of the Constitution of the World Health Organisation (WHO).

The WHO has set universal health coverage as one of the global goals¹⁵³ – understood as access for everyone to the health services they need, without suffering financial hardship to pay for them.

According to the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights¹⁵⁴, the elimination of a social security scheme without an adequate replacement programme could be an example of unwillingness by the State to fulfil its obligations. Moreover, while the UN Committee on Economic, Social and Cultural Rights provides valuable guidance in understanding the right to health and defines the obligation of States, importantly, it also emphasises the responsibility of international institutions in ensuring the right is properly given effect¹⁵⁵.

Article 35 of the EU Charter guarantees access to preventive healthcare and the right to benefit from medical treatment under the conditions established by national laws and practices.

While the EU Charter qualifies the right to be within the conditions of what is provided for by national legislation¹⁵⁶, **these 'conditions' should not be understood as limitations, or as**

¹⁵² WHO, 'The right to health', Factsheet N° 323, reviewed November 2013, available at: <http://www.who.int/mediacentre/factsheets/fs323/en/>.

¹⁵³ WHO, 'Universal health coverage (UHC)', Factsheet N° 395, September 2014, available at: <http://www.who.int/mediacentre/factsheets/fs395/en/>.

¹⁵⁴ On the occasion of the 10th anniversary of the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, a group of more than thirty experts met in Maastricht from 22-26 January 1997 with the objective to elaborate on the Limburg Principles as regards the nature and scope of violations of economic, social and cultural rights and appropriate responses and remedies and adopted the 'Maastricht Guidelines on Violations of Economic, Social and Cultural Rights', available at: <http://www1.umn.edu/humanrts/instate/Maastrichtguidelines.html>.

¹⁵⁵ UN ESCR Committee, 'General Comment No. 14: The right to highest attainable standard of health, UN Doc. E/C.12/2000/4, §39, available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4sIQ6OSmIBEDzFEovLCuW1AVC1NkPsgUedPIF1vfPMJ2c7ey6PAz2qaojTzDJmC0y%2b9t%2bsAtGDNzdEqA6SuP2r0w%2f6sVBGTpvTSCbiOr4XVFtqhOY65auTFbQRPWNDxL>.

¹⁵⁶ Thus, the right to healthcare is guaranteed by the Charter insofar as it is guaranteed by the domestic legislation. This means that, depending on the level of rights provided for by different Member States, the right is

allowing a Member State to limit access to healthcare *ad infinitum*. In particular, given that **Article 35 of the EU Charter requires that 'a high level of human health protection' must be ensured in the implementation of all of the EU's policies and activities, any Member State's actions cannot go against such standards.**

5.2. Overview of the measures affecting the right to healthcare

The right to health and, implicitly, the right to healthcare, need to meet the requirements of availability, accessibility, acceptability and quality¹⁵⁷.

With an average of over 10% of GDP spent on healthcare in the EU between 2008 and 2012¹⁵⁸, the costs of health in many countries were seen as huge. At the same time, some national health care systems had already been seen as inefficient and requiring reform, even before the crisis, with Member States struggling to deliver equal, efficient and high quality health services at affordable costs¹⁵⁹.

In Greece¹⁶⁰, Italy¹⁶¹ and Portugal¹⁶², prior to the crisis, the State provided universal health insurance or service coverage. In 2008 in Belgium more than 99% of the citizens benefited from a low-risk and high-risk coverage¹⁶³ while Spain provided almost universal coverage 'with hardly any exceptions' in 2006¹⁶⁴. In Ireland, however, which is considered unique among EU countries for not having universal coverage for primary care¹⁶⁵, in 2007 only

of a broader or of a narrower scope from one Member State to another. This reference to domestic legislation does not mean, however, that the national legislation can limit the access to healthcare beyond the standards imposed by EU and international law. The national legislation is obviously to be providing the guarantees which are stemming from the entire framework of the international protection of the right to healthcare.

¹⁵⁷ UN ESCR Committee, 'General Comment No. 14: The right to highest attainable standard of health', UN Doc. E/C.12/2000/4, available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4sIQ6QSmIBEDzFEovLCuW1AVC1NkPsgUedPIF1vfPMJ2c7ey6PAz2qaojTzDJmCOy%2b9t%2bsAtGDNzdEqA6SuP2r0w%2f6sVBGTpvTSCbiOr4XVFtqhQY65auTFbQRPWNDxL>.

¹⁵⁸ World Bank, 'Health expenditure, total (% of GDP)', undated, available at: <http://data.worldbank.org/indicator/SH.XPD.TOTL.ZS/countries/EU?display=graph>.

¹⁵⁹ Jakubowski E., 'Health Care Systems in the EU: a Comparative Study', European Parliament, Public Health and Consumer Protection Series, 1998, p. 5, available at: http://www.europarl.europa.eu/workingpapers/saco/pdf/101_en.pdf.

¹⁶⁰ See e.g. Notara V., Koupidis S.A., Vaga E. And Grammatikopoulos I.A., 'Economic crisis and challenges for the Greek healthcare system: the emergent role of nursing management', 23 August 2014, and sources cited therein, available at: <https://greekleftreview.wordpress.com/2014/08/23/commentary-economic-crisis-and-challenges-for-the-greek-healthcare-system-the-emergent-role-of-nursing-management/>.

¹⁶¹ Assembly of European Regions, 'Overview of Healthcare Systems: Austria, Great Britain, Italy, Poland, Romania, Spain, Sweden, Switzerland', 2009, p. 13, available at: http://www.aer.eu/fileadmin/user_upload/MainIssues/Health/2011/HC-comparison-updated.pdf.

¹⁶² Faria P.L., 'The Portuguese Universal Health System', in Mariner W., and Faria P.L. eds, 'Law and Ethics in Rationing Access to care in a High-Cost Global Economy', ENSP&BUSPH, 2008, available at: http://www.ensp.unl.pt/dispositivos-de-apoio/cdi/cdi/sector-de-publicacoes/precario/publicacoes_em_coedicao/conteudos-livros-pl/livro-2/02%20Lobato%20Faria.pdf.

¹⁶³ The Belgian Development Co-operation, 'Universal Health Coverage Addendum to the policy note "The right to health and healthcare"', February 2012, p. 8, available at: http://diplomatie.belgium.be/en/binaries/policy_note_healthcare_addendum_tcm312-195609.pdf.

¹⁶⁴ Lopez-Casasnovas G., 'Health Care and Fiscal Decentralisation in Spain', Universitat Pompeu Fabra - Faculty of Economic and Business Sciences, 2006, p. 11, available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1002561.

¹⁶⁵ Irish Ministry of Health, 'The Path to Universal Healthcare: White Paper on Universal Health Insurance', April 2014, available at: <http://www.imo.ie/policy-international-affair/overview/White-paper-on-Universal-Health-Insurance.pdf>.

30.2% of population held a medical card¹⁶⁶ - a document which proves the entitlement to care under favourable conditions.

Co-payment systems pre-existed in all of the Member States with regard to prescribed pharmaceuticals. Co-payments for visits to general practitioners were applied in Belgium, and for specialist consultations in Belgium, Italy, Ireland and Portugal. Co-payments for in-patient hospital care were already in place in Belgium and Portugal¹⁶⁷. Cyprus remains the only EU Member State without a public healthcare scheme. This is partly why it also has one of the lowest expenditure rates in the field¹⁶⁸, **i.e. half of the country's total public health expenditure is paid directly by the patients.** Currently, the Cypriot healthcare system consists of two parallel sub-systems: the public and private sectors. These two systems are currently operating separately, inefficiently and without coordination – leading to wastage of resources¹⁶⁹.

Years before the crisis, **equality of access** was already a concern for most health care systems¹⁷⁰. The reasons for such inefficiency were various, e.g. a report showed significant inequality in the prices of healthcare from one region to another in Italy, due to corruption¹⁷¹. Therefore, calls for cost effectiveness and increased efficiency were made **even before, and unrelated to, austerity in 'the search for improved or stable quality service provision within given financial limits to achieve health and satisfaction among the population served'**¹⁷².

In addition, health system reforms are recommended as part of the European Semester, as a means to jointly achieve fiscal consolidation and increase efficiency. Therefore, some Member States have included this in their National Reform Programmes (NRPs). The Council has asked a number of Member States to implement healthcare reforms¹⁷³. Thus, for example, **Spain requested to '[i]ncrease the cost-effectiveness of the healthcare sector, while maintaining accessibility for vulnerable groups, for example by reducing hospital pharmaceutical spending, strengthening coordination across types of care and improving incentives for an efficient use of resources'**¹⁷⁴. Thus, even though Troika has not explicitly requested a reform of the healthcare system in Cyprus, the Council had already done so in 2008¹⁷⁵.

¹⁶⁶ McDaid D., Wiley M., 'Ireland: Health system review', Health Systems in Transition, Vol 11 No. 4 2009, p. 68, available at: http://www.euro.who.int/_data/assets/pdf_file/0004/85306/E92928.pdf.

¹⁶⁷ Jakubowski E., 'Health Care Systems in the EU: a Comparative Study', European Parliament, Public Health and Consumer Protection Series, 1998, pp. 18-19, available at: http://www.europarl.europa.eu/workingpapers/saco/pdf/101_en.pdf.

¹⁶⁸ World Bank, 'Analysis of the Function and Structure of the Ministry of Health of the Republic of Cyprus', 9 May 2014, available at: [http://www.moa.gov.cy/moa/agriculture.nsf/All/73FF47B3520C6E61C2257CFC0042A94F/\\$file/MELET1%20%20%20%20%20Revised%20Final%20Report%20MANRE%20and%20SOEs%20May23.pdf](http://www.moa.gov.cy/moa/agriculture.nsf/All/73FF47B3520C6E61C2257CFC0042A94F/$file/MELET1%20%20%20%20%20Revised%20Final%20Report%20MANRE%20and%20SOEs%20May23.pdf).

¹⁶⁹ World Bank, 'Analysis of the Function and Structure of the Ministry of Health of the Republic of Cyprus', 9 May 2014, available at: [http://www.moa.gov.cy/moa/agriculture.nsf/All/73FF47B3520C6E61C2257CFC0042A94F/\\$file/MELET1%20%20%20%20%20Revised%20Final%20Report%20MANRE%20and%20SOEs%20May23.pdf](http://www.moa.gov.cy/moa/agriculture.nsf/All/73FF47B3520C6E61C2257CFC0042A94F/$file/MELET1%20%20%20%20%20Revised%20Final%20Report%20MANRE%20and%20SOEs%20May23.pdf).

¹⁷⁰ Jakubowski E., 'Health Care Systems in the EU: a Comparative Study', European Parliament, 1998, p. 26, available at: http://www.europarl.europa.eu/workingpapers/saco/pdf/101_en.pdf.

¹⁷¹ Custodero A. (Repubblica.it), 'Health, this is how two billion a year is wasted: Hospitals pay 30% more for products' (*Sanità, così si spreca due miliardi all'anno: Ospedali pagano i prodotti il 30% in più*), May 2010, available at: http://www.repubblica.it/cronaca/2010/05/21/news/inchiesta_italiana_21_maggio-4230616/.

¹⁷² Custodero A. (Repubblica.it), 'Health, this is how two billion a year is wasted: Hospitals pay 30% more for products' (*Sanità, così si spreca due miliardi all'anno: Ospedali pagano i prodotti il 30% in più*), May 2010, available at: http://www.repubblica.it/cronaca/2010/05/21/news/inchiesta_italiana_21_maggio-4230616/.

¹⁷³ EPHA, 'Reforming Health Systems in Times of Austerity', p. 3, March 2013, available at: http://www.eph.org/IMG/pdf/EPHA_Position_Paper_Reforming_Health_Systems_in_Times_of_Austerity_FINAL-1.pdf.

¹⁷⁴ Recommendation for a Council Recommendation on Spain's 2013 national reform programme and delivering a council opinion on Spain's stability programme for 2012-2016, COM(2013) 359 final, May 2013, available at: http://ec.europa.eu/europe2020/pdf/nd/csr2013_spain_en.pdf.

¹⁷⁵ Lisbon Strategy, 'Renewed national reform programme of the Republic of Cyprus', 2008, p. 9, available at: <http://ec.europa.eu/social/BlobServlet?docId=6088&langId=en>.

Consequently, all Member States covered by the study introduced some measures intervening with access to healthcare, even though necessarily and not only due to austerity, but within the entire context of the crisis,. However, Belgium is the only Member State which introduced only positive measures into its healthcare system, whereas the remaining six observed Member States introduced significant cuts in expenditure.

5.2.1. Reforms in the healthcare system

In some of the observed Member States, i.e. Cyprus or Greece, the need for a thorough reform of the healthcare system was already recognised before the crisis. However, with the outbreak of the crisis, the consequences were different. While in Cyprus, the reform, even though formally adopted, was **postponed** until 2015. In Greece, the system has been going through constant changes since 2010. Thus, the previous system in which a number of various healthcare providers existed was abolished and **a single entity** – the National Organization for the Provision of Healthcare Services (EOPYY), was established.

Similarly, in Portugal, the existing separate healthcare schemes for civil servants have undergone serious cuts, in order to make them **self-sustainable** by 2016.

5.2.2. Access to healthcare

In Spain, access to healthcare was changed from universal and free access to a system of access depending on **employment status**. Following the introduction of austerity measures, access to healthcare in Cyprus is now provided to Cypriots and EU citizens with permanent residence, who have been paying social insurance for at least three years – with a special scheme for the unemployed. The criteria for access to free healthcare have also been changed by setting a requirement of payment for persons whose income exceeds a certain prescribed amount.

In Ireland, medical cards which provided free universal entitlement for 70 year olds were removed in 2009. They were replaced with cards granting free appointments only with a general practitioner, in 2014.

5.2.3. Participation fees

In Cyprus, Greece, Italy, Portugal and Spain, **participation fees** were introduced for certain services, such as primary care, outpatient specialist care, laboratory tests, non-emergency medical transportation and emergency visits. An automatic indexation of fees was introduced in Portugal. Such fees already existed in Belgium and Ireland, but in Ireland they were increased due to austerity measures. In Spain, the **minimum and maximum participation rates** were determined.

5.2.4. Reorganisation of hospitals and other healthcare providers

In Portugal, **hospital management was rationalised** by the merger of management staff and a reduction in number of management staff. In Italy, criteria for the appointment of hospital managers were changed. In Spain, an initiative towards privatising hospitals and health centres and outsourcing of management was abandoned. In Greece, the system of

social welfare establishments, e.g. clinics for chronic illnesses, rehabilitation centres, specialised clinics for children and people with disabilities, was reformed, while mental health institutions were subject to staff cuts or closure. In Ireland, in 2013, the closure of between 555 and 898 **public nursing home beds** was decided upon. Some public nursing homes have also been closed down (and more are due to close). Spain recorded a reduction in the number of hospital beds, and similarly, in Italy, the regions were mandated to **reduce the number of hospital beds** from 4 to 3.7 per thousand inhabitants. In Portugal a number of **hospitals were announced to be closed**, in an effort to achieve concentration and rationalisation in State hospitals and health centres, as well as specialisation and concentration of hospital and emergency services. In Ireland, a **decline in home help** and home care packages has been recorded.

5.2.5. Measures affecting medical staff

According to the general rules applicable to public employees, there has been a **reduction and then freeze in the salaries** of medical staff in Spain. Similar measures were imposed in Ireland and Greece. In Portugal and Greece, the **mobility** of medical staff was increased, with the adoption of flexible time arrangements and implementing stricter control of working hours and work activities of staff. A moratorium on new recruitments was imposed in Greece, Ireland, Italy and Spain.

In order to reduce the occurrence of **defensive care** (when doctors prescribe examinations or treatment out of fear of civil liability for damages), the civil and criminal liability of medical professionals was redefined. Therefore, in Italy, doctors are exempt from liability as long as they act in accordance with professional guidelines and good practices – with a maximum amount of payable damages having been defined.

5.2.6. Cost of drugs and other services

In Greece and Portugal, an obligation was introduced for doctors in both the public and private health sector to prescribe **generic drugs**, rather than more expensive brand name drugs. The system of **electronic prescriptions** was introduced in Greece and Portugal to improve control over prescribing drugs and diagnostics, e.g. laboratories and imaging. In Greece, Italy, Spain and Portugal, the State intervened with the **pricing** of generic medicines by fixing the maximum price, setting a price reduction, and/or setting general rebates and margin calculations for pharmaceutical products. In Greece, a spending cap and an effective **prescription budget** were introduced for each doctor, and sanctions and penalties are foreseen for non-compliant doctors. Ireland introduced prescription fees.

In Belgium, structural measures were introduced to reduce the **volume of medical imaging**. Greece and Ireland also introduced **patient contribution** for prescription drugs, even for severe and chronic illnesses, such as Alzheimer's, dementia, epilepsy, and osteoporosis.

5.2.7. Administrative reforms

Tax allowances for healthcare were cut by two-thirds in Portugal. Greece introduced a single system for making **medical appointments**. In Ireland, the cost of **private health insurance** was increased. The provision of **private medical services** in public hospitals in

Italy was regulated to ensure revision of the availability of space and that a shares of the revenues are assigned to the hospitals.

Italy also introduced a scheme to control the deficits on health spending in the regions, enabling the central Government to intervene and establish a compulsory administration. Innovations were also introduced into the system of public procurement, requiring revision of all procurement contracts of a large value.

In Greece and Italy, additional measures were introduced towards better **control of procurement**, so that the purchase and stocking of medical supplies corresponds to actual needs, rather than stocking-up unnecessarily.

5.3. Measures taken in alleviation of austerity measures affecting the right to healthcare

In Belgium, the ceiling for entitlement to **increased reimbursement** of healthcare expenses was introduced in 2011 and 2013, while the previously existing **fee supplement** for hospitalised patients in communal or double rooms, for non-conventioned physicians, was removed. Furthermore, **maximum billing** for chronically ill patients was introduced. The **preferential reimbursement system** for low-income households, and a third-party payment system, became mandatory for the chronically ill and those already within the preferential reimbursement scheme¹⁷⁶. In Ireland, an additional effort was made to provide **free primary care** to long-term illness patients and children under the age of five, while an additional investment was made in **community mental health teams** and services.

Greece put in place a temporary extension of health coverage, a provision of pharmaceutical coverage for the **unemployed**, and launched a health voucher programme in 2013, to provide access to primary healthcare services for 230,000 long-term uninsured.

In Portugal and Italy, **primary care** was reinforced in order to pre-empt visits to specialists and emergencies, and to move outpatient services from hospitals to primary care. In Italy, the regions were mandated to establish **health centres**, which should ensure the constant availability of primary health services and reduce hospitalisation.

5.4. Impact of the measures affecting the right to healthcare

With significant budget cuts in healthcare, it is easy to find a direct correlation between the crisis, the measures taken to tackle it, and the possible impacts of such measures on individual fundamental rights. It has, thus, been observed that in Greece, the bail-out agreement shifted the burden of healthcare from the State to the patient, with an increase in user fees and co-payments for certain medicines, and the introduction of prescription fees. This, coupled with the erosion in health coverage, and the linking of health protection with employment status¹⁷⁷, has directly affected the level of healthcare provided to citizens – consequently, bringing into question the level they enjoy of the right to health.

¹⁷⁶ Namely, in Belgium, outpatient services are paid by the patient and then reimbursed by the insurance. However, as it has been seen as an excessive burden for these two groups of patients, the system of direct payments by the insurance was introduced.

¹⁷⁷ A. Kentikelenis et al., 'Greece's health crisis: from austerity to denialism', *The Lancet*, vol. 383, 2014, p. 748, available at: <http://www.enetenglish.gr/resources/article-files/piis0140673613622916.pdf>.

Furthermore, indirect consequences have also been recorded, most notably in the area of mental health, and the increased suicide rate in Greece¹⁷⁸.

The EU Council invited Member States to continue further improving access to high quality healthcare services. The Member States were requested to pay particular attention to the most vulnerable groups, drawing lessons from the crisis, and promoting universal access to high quality healthcare. They are expected to take into account different components of universal access, so that necessary health reforms can be accomplished without compromising the functioning of health systems as part of social safety nets¹⁷⁹.

In its report on human rights during the crisis, the FRA noted the increased risk of effects that austerity measures might have on the right to health of vulnerable groups. The FRA noted that the EU does not appear to carry out *ex ante* assessment of the potential for the conditions attached to its balance of payments support to adversely affect vulnerable groups¹⁸⁰. The CoE Commissioner has also noted that the cuts in health-related spending have affected the right to enjoy the highest attainable standard of health, in particular for children and migrants¹⁸¹.

However, in view of the complaints regarding the effectiveness of pre-existing systems, the interventions brought about some positive impacts. Thus, in Portugal some measures actually contributed to an **effective cost reduction** – in particular, regarding medicine expenses. Therefore, reforms¹⁸² aimed at reducing the price of medicines have a significant impact on both public and private expenses. Furthermore, Italy has been praised for its capacity to maintain the quality of its healthcare system, which has been considered as one of the world's best¹⁸³, while containing expenditure better than other countries – even in the context of the generally bad conditions of Italy's budget and public finances¹⁸⁴.

5.4.1. Access to healthcare

Cuts in spending on healthcare were bound to impede with access to healthcare for the affected groups of people. Thus, in Spain, **undocumented migrants** have been removed from the system of healthcare, except in limited circumstances of emergency care. In Cyprus, the cuts resulted in the exclusion from healthcare of **Northern Cypriots** and EU citizens in **undeclared employment**. In Greece¹⁸⁵, an increasing number of **long-term**

¹⁷⁸ A. Kentikelenis et al., 'Greece's health crisis: from austerity to denialism', *The Lancet*, vol. 383, 2014, p. 750, available at: <http://www.enetenglish.gr/resources/article-files/piis0140673613622916.pdf>.

¹⁷⁹ Council of the EU, 'Council conclusions on the economic crisis and healthcare', June 2010, available at: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/lsa/143283.pdf.

¹⁸⁰ FRA, 'The European Union as a Community of values: safeguarding fundamental rights in times of crisis', Focus report, 2012, p. 41, available at: http://fra.europa.eu/sites/default/files/fra-2013-safeguarding-fundamental-rights-in-crisis_en.pdf.

¹⁸¹ CoE Commissioner, 'Maintain universal access to health care', Human Rights Comment, August 2014, available at: <http://www.coe.int/en/web/commissioner/-/maintain-universal-access-to-health-care>.

¹⁸² Portuguese Ministry for Health, 'Crisis as an opportunity to introduce efficiency improving reforms - The case of Portugal', Presentation prepared for a WHO meeting, Oslo, April 2013, available at: http://www.portaldasauade.pt/NR/rdonlyres/C6706A8D-70F3-4A5B-8392-AA7C5DC4ADC2/0/MS_OSLO2013.pdf.

¹⁸³ OECD, 'OECD Health Statistics 2014: How does Italy compare?', 2014, available at: <http://www.oecd.org/els/health-systems/Briefing-Note-ITALY-2014.pdf>.

¹⁸⁴ Stakeholder interview, academic, October 2014. See also Mapelli V., 'Italy – the Virtuoso of Healthcare Spendind' (*L'Italia virtuosa della spesa sanitaria*), August 2011, available at: <http://www.lavoce.info/litalia-virtuosa-della-spesa-sanitaria/>.

¹⁸⁵ According to the OECD, in 2013 in Greece, around 10% of the population was not eligible for health insurance. See OECD, 'Economic Surveys: Greece (Overview)', November 2013, p.31, available at: http://www.oecd.org/eco/surveys/GRC_Overview_Eng_2013.pdf.

unemployed and self-employed professionals who are unable to pay their social security contributions, are not covered by public health insurance.

In Portugal, it was noted that inhabitants of the **interior and more isolated regions** face increased difficulties in obtaining treatment. Due to the closure of hospitals, citizens living inland will have to travel more than 150 km – sometimes on toll-paying motorways, with no equivalent alternative. Given that these are isolated and ageing populations, the situation is even more likely to prevent effective access to the National Health System (NHS) and the guarantee of the right to healthcare.

In some Member States, such as Spain, due to the divided competence between the central Government and the regions, the level of protection appears to be **unequal**, with some regions maintaining universal and free access to healthcare, despite the central policy of limiting access. Thus, for example, the Government of the Basque Country was the first autonomous community to approve a decree in order to allow the most disadvantaged groups to request compensation/reimbursement for healthcare¹⁸⁶.

In Italy, the opening of health centres was not synchronised to happen at the same time as the reduction in hospital beds, thus leaving a number of people without proper healthcare in the meantime.

5.4.2. Additional financial burden

Many of the measures resulted in an **increase of direct cost for citizens**, such as user-fees for outpatient visits, and increased contribution for medicines, pharmaceutical material and health services – which were recorded in Cyprus, Greece, Ireland, Italy, Portugal and Spain. In Greece, the new phone-appointment system was said to have imposed an additional indirect cost on individuals seeking healthcare. In Italy, too, the cost of healthcare is increasingly falling upon households. In Portugal, a huge increase in health fees was recorded in public healthcare facilities. In Ireland, in 2013, every person was, on average, paying about €100 in additional costs for accessing care and prescribed drugs.

With requirements for participatory fees, the Member States basically shifted the burden from budgets to the citizens. This may well be illustrated by the fact that in Ireland, for example, in 2008, people were reimbursed for drug costs above €85 per month whereas by 2013, this had risen to €144. At the same time, in 2008, the State paid out over €311 million in the drug payment scheme. By 2012, this had more than halved to €127 million, showing a direct transfer of cost from the State to the patients¹⁸⁷.

5.4.3. Reductions in number of staff

A **loss of jobs** was recorded in Spain and Greece. In Ireland, the **moratorium** on new employment effectively resulted in the loss of 1,500 posts. In Cyprus, due to the moratorium on salaries, doctors decided to **move from the public to the private sector**,

¹⁸⁶ El País, edición del País Vasco, 'Compensation of co-payment may be requested before the end of the year (*La compensación del copago se podrá solicitar antes de fin de año*)', November 2013, available at: http://ccaa.elpais.com/ccaa/2013/11/19/paisvasco/1384864364_977532.html.

¹⁸⁷ Burke S., Thomas S., Barry S., Keegan C., 'Measuring, Mapping and Making Sense of Irish Health System Performance in the Recession', March 2014, p. 4, available at: <http://www.medicine.tcd.ie/resilience4health/assets/pdf/pubs/Resilience-working-paper-March-2014.pdf>.

which effectively caused a decrease in the number of staff in public healthcare institutions. The **lack of motivation** and indignation of doctors and nurses was noted in Portugal.

5.4.4. Access to services

In Italy, the number of hospital beds was reduced. The alleviation measure of the introduction of health centres was not secured in time for this reduction, which effectively resulted in a lack of access to such services in the meantime. Due to limitations, in Greece, patients were released from hospitals before having properly recovered. Large-scale retirement and staff cuts have affected access to services in Ireland¹⁸⁸. For example, the **Health Service Executive's (HSE) 2013 Service Plan foresaw the closure of between 555 and 898 public nursing home beds** due to agency and overtime cuts, retirements, staff cuts, and facility failures to meet new infrastructure standards¹⁸⁹. Some public nursing homes have also been closed down (and more are due to close) as a result of funding cuts and staff cuts¹⁹⁰.

5.4.5. Waiting times

In Cyprus, Greece, Ireland, Italy and Spain, waiting times have been recorded for services such as medical examinations or surgery. In Cyprus, the average waiting time for an appointment in a public hospital is **seven months** – even for life-threatening and serious conditions. In Spain, in 2012, more than **570,000 people** awaited surgery. The average waiting time was 100 days in Ireland, in 2012, where more than 480,000 people were waiting for a public outpatient hospital appointment – 17% of these waiting between 12-24 months, 6.4% waiting between 24-36 months, and 5.2% waiting for **over three years** for a first appointment¹⁹¹.

5.4.6. Alternatives to public healthcare

Due to the additional financial burden in some countries, such as Greece and Spain, more and more people resort to **'social clinics'**¹⁹² and **'social pharmacies'** staffed by volunteer doctors and nurses. In Spain, up to 62% of patients attended by the **NGO service** had previously been rejected by the public healthcare provider – which was three times higher than the average in the rest of the analysed countries¹⁹³. Doctors of the World (*Médecins du Monde - MdM*) operate 11 polyclinics in Greece, in which nearly half of the patients are now Greek citizens – many of them past the age of retirement.

¹⁸⁸ O Cionnaith F., and Ring E., '€750m in healthcare cuts to hit the most vulnerable', Press Release, 17 January 2012, Irish Examiner, available at: <http://www.irishexaminer.com/ireland/health/750m-in-healthcare-cuts-to-hit-the-most-vulnerable-180444.html>.

¹⁸⁹ European Social Network, 'The impact of austerity policy on social services in Ireland', 26 September 2013, available at: <http://www.esn-eu.org/news/254/index.html>. See O Cionnaith F., and Ring E., '€750m in healthcare cuts to hit the most vulnerable', Press Release, 17 January 2012, Irish Examiner, available at: <http://www.irishexaminer.com/ireland/health/750m-in-healthcare-cuts-to-hit-the-most-vulnerable-180444.html>.

¹⁹⁰ Office of the Ombudsman, 'Health care in Ireland- An Ombudsman Perspective', 2011, available at: <https://www.ombudsman.gov.ie/en/news/speeches-articles/2011/health-care-in-ireland-an-ombudsman-perspective-.html>.

¹⁹¹ HSE, 'Outpatient Data Quality Programme Update', February 2012.

¹⁹² NGO Klimaka, 'Social Clinics', available at: <http://klimaka-socialservice.blogspot.be/2013/05/blog-post.html>.

¹⁹³ MdM, 'Health in development cooperation and humanitarian action. Report 2012 (*La salud en la cooperación al desarrollo y la acción humanitaria. Informe 2012*)', 2012, available at: http://www.medicosdelmundo.org/index.php/mod.documentos/mem.descargar/fichero.documentos_Informe_2012_f1d45db7%232E%23pdf.

The demand for public healthcare in Cyprus grew 20-39% while, in Ireland, over 200,000 people have left the private health insurance market since it peaked in 2008. At the same time, in Italy, more than half of its patients appear to seek services from the private health sector¹⁹⁴, and in Spain, the private health insurance industry saw its premium income increase¹⁹⁵.

This **paradox** may be explained by the fact that, in Cyprus, prior to the crisis, 50% of all healthcare was provided by private providers, while in Ireland too, the private sector was **catering to the population's health needs more significantly** – given the limited healthcare coverage of the Irish NHS. At the same time, access to public healthcare in Italy was universal and free (or at a small cost).

With the outbreak of the crisis, more people in Cyprus started seeking free healthcare from the public providers, thus causing this increase. In Italy, however, the participation fees were increased and waiting times prolonged – which might have pushed people who could afford private services (and supposedly could have afforded them prior to the crisis, but have been comfortable with using public healthcare), to seek medical help in private clinics and hospitals, because for a difference in price, they get a service with a more reasonable timeframe.

5.4.7. Unmet medical needs

The additional financial burden and long waiting lists caused people to hesitate before going to a doctor. While this may have helped in removing from the system those beneficiaries who would access public healthcare without serious cause, it may still have consequences on those who cannot go to a doctor because they can no longer afford it. Thus, in Belgium 14% of the population said that they had decided against medical treatment, or to delay or suspend such treatment for financial reasons¹⁹⁶, while six-out-of-ten patients had to scale down their expenditure in other areas, e.g. housing, food, fuel and education, in order to pay their health care bills. Similarly, in Greece, the MdM teams note that they have patients who may have to choose between eating and buying their medicines¹⁹⁷.

In Italy, the introduction of fees for public healthcare services led to a reduction in demand (<30%) by patients in some regions, with a reported 11% of the population having forgone medical services despite needing them¹⁹⁸.

In Greece, around 1.5 times more people reported unmet medical needs in 2011, compared to 2007¹⁹⁹. Concerning the reasons for these unmet needs, there were around 1.4 times as

¹⁹⁴ Bocci M., Ssn, 'Fewer and fewer services for citizens: "In 2012 drugs tickets up for 40%" (*Sempre meno servizi per i cittadini: "Nel 2012 ticket farmaci +40%"*)', March 2013, and sources cited therein, available at: http://www.repubblica.it/salute/medicina/2013/03/19/news/sanit_ticket_sui_farmaci-54900788.

¹⁹⁵ El País, García, M.A., 'Private health leverages public cuts (*La salud privada aprovecha el tijeretazo público*)', April 2012, available at: http://economia.elpais.com/economia/2012/04/05/actualidad/1333639115_304085.html.

¹⁹⁶ Demarest S. et Mimildis, H., 'The determinants of access to health care in Belgium – A needs assessment study of care needs unmet due to financial reasons, based on a Belgian health survey (*Les déterminants de l'accès aux soins de santé en Belgique – Une étude des besoins de soins non-satisfaits pour des raisons financières sur base de l'enquête de santé belge*)', Bruxelles, Institut de Santé Publique, 2012.

¹⁹⁷ Doctors of the World, 'Access to Healthcare in Europe in a Time of crisis and Rising Xenophobia', 2013, available at: http://b3cdn.net/droftheworld/d137240498b91ca33e_jhm62yjg1.pdf.

¹⁹⁸ Repubblica.it, Istat, 'The crisis also affects health. 11% Italians forego care (*La crisi colpisce anche la sanità. L'11 %degli italiani rinuncia alle cure*)', December 2013, available at: http://www.repubblica.it/salute/2013/12/24/news/istat_italiani_rinunciano_a_cure-74396933/.

¹⁹⁹ A. Kentikelenis et al., 'Greece's health crisis: from austerity to denialism', *The Lancet*, vol. 383, 2014; pp. 748–53, available at: <http://www.enetenglish.gr/resources/article-files/piis0140673613622916.pdf>.

many persons reporting that they could not afford medical care, around 1.2 times as many persons reporting that it was due to the waiting list, and 2.8 times as many people reporting that healthcare was at a place to which it was too far to travel. In Portugal, there is concern that some people will have to travel up to 150 kilometres in order to be provided with healthcare.

In Greece, Cyprus and Italy, people reported cost as a barrier for seeking medical assistance²⁰⁰.

5.4.8. Preventive and protective measures

The cuts in budgets have also had consequences for preventive and protective care measures. Thus, in Portugal, a decrease in the number of children with up-to-date **vaccines** was recorded. In Spain, increases in the numbers of **suicides, HIV and tuberculosis** cases have been noted. In Ireland, services which are provided universally without charge, such as **public health nurses' visits to new born babies**, vaccinations, and **palliative care**, have come under pressure and are now more limited²⁰¹. In Greece, locally-transmitted **malaria** re-emerged for the first time in 40 years, due to cuts in municipal anti-mosquito spraying programmes.

5.4.9. Interventions in the pharmaceuticals market

It was reasonable to expect that, with the interventions in the pharmaceuticals market, the expenditure under this heading would drop, and expectedly, **significant decreases** were recorded in, for example, Greece and Italy. However, there were negative impacts too. Thus, the interventions in the pharmaceuticals market, at times, led to **shortages in the supply** of certain medicines in Greece and Portugal, where 22% of pharmacies report a shortage of insulin – a lifesaving medicine²⁰². Furthermore, interventions caused the **bankruptcy** of many pharmacies in Portugal.

5.4.10. Impact on vulnerable groups of population

People with disabilities and their families have been disproportionately disadvantaged by the general measures in Ireland, and by the reduction of the carer's allowance, creating a situation in which many disabled people may be effectively imprisoned in their own homes²⁰³. In particular, the lack of care for **mental health problems** has been noted in Ireland and Portugal. Notably, in Ireland, mental health spending dropped from 13% to 5.3%, of the total health expenditure in 2010. At the same time, the moratorium on recruitments disproportionately affected the mental health sector, which represents only

²⁰⁰ Eurofound, 'Impacts of the crisis on access to healthcare services in the EU', 2013, p.15, available at: http://eurofound.europa.eu/sites/default/files/ef_files/pubdocs/2013/85/en/1/EF1385EN.pdf.

²⁰¹ ASISP Burke S., 'Pensions, Health and Long-Term Care', November 2013, available at: http://socialprotection.eu/files_db/1405/IE_asisp_CD13.pdf.

²⁰² Portuguese Observatory of Health Systems, 'Report Spring 2014 - Health, The Denial Syndrome (*Relatório de Primavera 2014 - Saúde, Síndrome de Negação*)', 2014, pp. 80-81, available at: <http://www.observaport.org/sites/observaport.org/files/RelatorioPrimavera2014.pdf>.

²⁰³ Ring E., 'Welfare cuts leaving the disabled 'prisoners'', Press Release, The Irish Examiner, October 2011, available at: <http://www.irishexaminer.ie/ireland/welfare-cuts-leavingthe-disabled-prisoners-167660.html>; Center for Economic and Social Rights, Mauled by the Celtic Tiger: Human rights in Ireland's economic meltdown: Rights in crisis briefing paper', February 2012, available at: <http://www.cesr.org/downloads/cesr.ireland.briefing.12.02.2012.pdf>.

9% of the healthcare work force but accounted for 20% of the posts lost through the moratorium²⁰⁴.

In Belgium, it is mostly **young people** below the age of thirty, and **single-parent families** who have frequently postponed or suspended healthcare – especially specialised medical care, dental care and the purchase of medicines²⁰⁵.

In Belgium as well as Ireland, an increasing number of **women** are affected as they are unable to afford sexual and reproductive health services²⁰⁶.

In Ireland, the cuts in public services, such as home help, day care services and community nursing units, the loss of many public beds, increases in prescription charges and means-tested access to medical cards, have all adversely affected and had a particularly severe impact on **older people** with the most fragile health²⁰⁷, **persons with autism** and their families²⁰⁸, people with **low incomes** who cannot afford private health care²⁰⁹, the **homeless and asylum seekers**²¹⁰. **Undocumented migrants** have also been affected in Cyprus, Greece and Spain. In Ireland and Portugal, **people living in rural areas** face numerous barriers in accessing health care services.

²⁰⁴ Mental Health Reform, 'Mental Health in Ireland', undated, available at: <http://www.mentalhealthreform.ie/home/mental-health-in-ireland/>.

²⁰⁵ Keckley, P.H. et al, 'Survey of Health Care Consumers in Belgium – Key Findings, Strategic Implications', Brussels, Deloitte, 2011, available at: http://www.deloitte.com/assets/dcom-unitedstates/local%20assets/documents/us_chs_2011consumersurveyglobal_062111.pdf.

²⁰⁶ Center for Economic and Social Rights, 'Mauled by the Celtic Tiger: Human rights in Ireland's economic meltdown: Rights in crisis briefing paper', February 2012, available at: http://www.cesr.org/downloads/cesr_ireland_briefing_12_02_2012.pdf.

²⁰⁷ O Cionnaith F., and Ring E., '€750m in healthcare cuts to hit the most vulnerable', January 2012, Press Release, Irish Examiner, available at: <http://www.irishexaminer.com/ireland/health/750m-in-healthcare-cuts-to-hit-the-most-vulnerable-180444.html>; UN GA, 'Report of the independent expert on the question of human rights and extreme poverty', Sepulveda Carmona M., UN Doc. A/HRC/17/34/Add.2: Mission to Ireland, May 2011, available at: http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A_HRC.17.34.Add.2_en.pdf; Social Justice Ireland, 'Budget 2014: Analysis & Critique', October 2013, available at: <http://www.socialjustice.ie/sites/default/files/file/Budget/2013-10-16%20-%20Budget%20Analysis%202014%20FINALFINAL.pdf>.

²⁰⁸ Irish Health, 'Parents stressed over autism cutbacks', June 2013, available at: <http://www.irishhealth.com/clin/depression/newsstory.php?rss&id=22197>.

²⁰⁹ Burke S., 'Boom to bust: its impact on Irish health policy and health services', (2):1 Irish Journal of Public Policy, 2010, available at: <http://publish.ucc.ie/ijpp/2010/01/burke/08/en>.

²¹⁰ Stakeholder interview, Academic, September 2014.

6. IMPACT OF AUSTERITY MEASURES ON THE RIGHT TO WORK

KEY FINDINGS

- The study focuses on the impact of the crisis on the right to work, understood as the right to engage and remain in employment under fair conditions.
- All of the seven observed Member States have made interventions into the right to work. While many measures were aimed at facilitating the dismissal of employees in times of economic downturn, many were also aimed towards alleviating the effects of the negative trends in the labour market.
- The main measures introducing limitations to the exercise of the right to work were those related to increased job losses, decreased wages, increased working hours, facilitation of the use of temporary and part-time employees, imposition of involuntary mobility and decreased unemployment protection.
- Some measures were implicitly aimed more towards women than men, while there were also some explicit measures affecting the employment conditions of migrants.
- **The measures taken in alleviation mostly concern: workers' empowerment; facilitating job placement; introducing tax and other forms of financial relief on the cost of employment; encouraging traineeships, professional training and self-employment; facilitating transition from part-time and temporary contracts to full-time permanent employment.**
- Some measures, such as freezing recruitment in public services, lead to the direct loss of jobs. Other measures lead to a decline in wages. At the same time working conditions and job security appear to be threatened and an increase in the number of economically dependent self-employed workers is registered.
- The measures appear to have disproportionately affected a number of groups, including women, young workers, people with disabilities, migrants, Travellers, low-paid workers, retired, and single people.

6.1. Guarantee of the right to work

The minimum essential levels of the right to work and rights at work are defined through the jurisprudence of the ECSR and ILO labour standards. The minimum standard of the right to fair remuneration, for example, is set by the ECSR at a threshold of 60% of the national average wage, or as agreed by collective bargaining. At national level, while reviewing the constitutionality of the State Budget Law for 2013, the Portuguese Constitutional Court **established the existence of a guarantee of a "right to a minimum level of subsistence" and found that this was not put in place by the state when adopting the budget reductions in sickness and unemployment benefits²¹¹.**

The right to work, for the purposes of the present study, is understood as the right to engage in, and remain in, employment under fair conditions.

²¹¹ Constitutional Court of Portugal, *Ruling No.187/13*, 5 April 2013, as per CoE Commissioner, 'Safeguarding human rights in times of economic crisis', issue paper, December 2013, p. 29, and sources cited therein, available at: <https://wcd.coe.int/ViewDoc.jsp?id=2130915>.

The right to engage in employment figures prominently in EU policies, so much so that, in 2005, the European Council adopted its Employment Guidelines²¹², setting goals for higher employment levels. Unfortunately, the adoption of the guidelines coincided with the outbreak of the crisis. With EU Member States experiencing an increase in unemployment rates, certain parts of the population were affected more than the others. The levels of unemployment among young people are disproportionately high, while the rate of long-term unemployment is also growing. In addition to the general conditions in the economy, and consequently in the labour markets, according to the bail-out agreements, serious budgetary cuts resulted in the closure of a number of posts in the civil service, which directly interfered with the right to work of the affected individuals. Furthermore, in relation to Greece, the European Committee on Social Rights in its Conclusions of 12 July 2012, found that policy efforts have been inadequate in combatting unemployment and promoting job creation. The Committee also found that Ireland, Belgium, Portugal and Spain were violating certain aspects of the right to work, whilst the provision of certain benefits was found to have been discriminatory in some of these countries.

If narrowly observed, the right to work is the right to engage in employment and a prohibition on preventing someone from doing so. If seen as such, there is no guarantee which would protect the right to engage in employment – even though prohibiting access to employment might be observed through some anti-discrimination provisions. However, this right may be observed more broadly, given that there is a whole set of rights related to work **itself, i.e. the so called ‘rights at work’**. **These rights, however, are not a focus of the present study**, even though some of them will be presented in section 10.

Article 6 of the ICESCR recognises the right to work in the sense of the opportunity for everyone to earn their living through freely-chosen or accepted work. In that regard, States Parties are expected to take appropriate steps to safeguard this right, including the provision of vocational and technical training, and economic policies aimed at steady economic development and full employment. This right, according to the ICESCR, implies that the Parties must guarantee equal access to employment and protect workers from being unfairly deprived of their employment – including the prevention of discrimination. This right depends on a number of interdependent and essential elements, the implementation of which will depend on the conditions present in each State Party, which may be identified as availability, accessibility, acceptability and quality, while the States have the general obligation to respect, protect and fulfil this right²¹³. Moreover, the ILO has the right to work as one of its core activities, and several conventions have been adopted within its framework to protect and improve the enjoyment of the right to work.

The right to work, as understood for the purposes of this study, covers the right to engage in work (Article 15 of the EU Charter), the right to protection against unjustified dismissal (Article 30 of the EU Charter, which is specified by reference to Union law and to national laws and practices), and the adaptability of employment conditions (in the context of the right to fair and just conditions from Article 31 of the EU Charter).

²¹² European Council, ‘Decision 2005 on Guidelines for the employment policies of the Member States’, (2005/600/EC), July 1995, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32005D0600&from=EN>.

²¹³ ESCR Committee, ‘General Comment No. 18: The right to work’, UN Doc. E/C.12/GC/18, February 2006, available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4sIO6QSmIBEDzFEovLCuW1aOSzab0oXTdImnsJZZVOfUKxXVIsd7Dae%2fCu%2b13J25Nha7I9NlwYZ%2fTmK57O%2fSr7TB2hbCAidyVu5x7XcqjNXn44LZ52C%2bIkX8AGQrVylc>.

6.2. Overview of the measures affecting the right to work

With increased unemployment, which was one of the first consequences of the crisis, the right to work was immediately affected. From 2008-2012, the crisis caused a deficit of around 50 million jobs globally, while an additional 80 million was expected to join the labour market in an economy incapacitated to accommodate them with jobs²¹⁴. Thus, the interventions were necessary and were primarily aimed at accommodating two different demands: facilitating the flexibility employers needed in particular circumstances in which the economy had to respond to changes in the global market caused by the crisis, and facilitating new employment opportunities at a time when unemployment rates grew at an alarming pace²¹⁵. In other words, hiring and firing is being made easier, while employment is stimulated²¹⁶. This is the reason for the largest number of alleviation measures of the crisis, introduced in relation to this particular right, in comparison with the other rights observed.

It needs to be noted that it has been and, throughout the crisis, it remains, difficult for Member States to accommodate the right to work, since it is difficult to create policies which are sure to enable an expansion of employment²¹⁷. In addition, the Member States do not seem to have a clear agenda regarding to the right to work. Low interest rates over recent years would, it was hoped, channel credit into businesses and thereby help create employment. On the contrary, they just seem to have channelled money into investment assets and worsened global inequality, thus negatively affecting employment. Furthermore, there is no steady correlation between economic growth and increased employment rates²¹⁸. It would also appear that similar goals might possibly be achieved with different, or even opposing, means. Due to these circumstances, different approaches have been taken in similar situations. Thus, for example, while all observed Member States in the present study have been introducing measures in the field of employment, similar targets were tackled differently by different Member States, or even differently within the same Member State at different times. Given the particular circumstances in each Member State, and due to such interventions, the movements in the labour markets varied too. For example, since the outbreak of the crisis, changing trends in temporary employment could be noted. The proportion of temporary work was significantly reduced in Spain – in 2004, it amounted to 32.2% and fell to 23.2% in 2014, while in Greece, it also fell, though not so drastically, from 12.5% to 10.2%. It remained roughly the same in Belgium and Portugal – around 8% and 20% respectively. However, the share of temporary work among the labour force grew in Cyprus from 13.1% to 18.9%, in Italy from 11.9 to 13.2% and in Ireland from 3.4 to 10%²¹⁹.

²¹⁴ ILO, 'World of Work Report 2012', p. VII, available at: http://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/@publ/documents/publication/wcms_179453.pdf, 2012.

²¹⁵ For a comprehensive overview of measures across the EU Member States see European Commission, 'LABREF: Labour Market Reforms Database', available at: http://ec.europa.eu/economy_finance/indicators/economic_reforms/labref/.

²¹⁶ Freshfields Bruckhaus Deringer LLP, 'Labour market reforms tracker', winter 2014, available at: http://www.freshfields.com/uploadedFiles/SiteWide/Knowledge/36432_Labour_Market_Reforms_Interactive.pdf.

²¹⁷ Stakeholder interview, ETUC, December 2014.

²¹⁸ Stakeholder interview, ETUC, December 2014.

²¹⁹ Eurostat, 'Temporary employees as percentage of the total number of employees by sex, age and nationality (%)', July 2014, available at: http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=ifsa_etpgan&lang=en.

6.2.1. Job loss

One of the most obvious consequences of the crisis and its impact on the right to work was the growing unemployment and the loss of jobs. Indeed, the falling trends in employment rates can be recorded across the seven observed countries in the period 2008-2013²²⁰. However, whilst a number of jobs were lost because of receding economies, some jobs were lost as a result of austerity policies of the Member States, either directly – through **layoffs**, or indirectly – by means of **moratoria on new employment**²²¹, while at the same time, encouraging **early retirement**, or **career breaks**.

Restrictions on employment in the public sector were introduced in Cyprus, Greece, Ireland, Italy, Portugal and Spain. In Ireland, a reduction in public service staff numbers by 24,750 over 2008, levels, returning them to 2005 levels was a condition for the EU/IMF bail-out²²². A moratorium was imposed on new employment in the civil service, non-commercial State bodies, local authorities, the army and the Garda (Irish Police Service). In addition, all sections of the civil service have been given targets to reduce staff under Employment Control Frameworks for each Department²²³. In Ireland and Cyprus, early retirements were encouraged. In Cyprus, this was done by means of tax deductions on the retirement bonus, while in the banking sector employees reported pressures by managers to accept early retirement schemes²²⁴.

In Greece, in which the largest number of reforms was imposed, apart from moratoria on new employment, measures such as voluntary **conversion of full employment to part-time employment** in the public sector and the **abolition of indefinite duration contracts** in the public sector, were introduced.

Not all jobs were lost due to dismissals, as a freeze on employment and similar measures are accountable for the abolition of many positions. However, in the changing circumstances of the labour market, many interventions were made to the conditions for **dismissal**. Nonetheless, as with some other rights, e.g. the right to pension, in certain instances initially, the conditions for dismissal were being made more stringent at the beginning of the crisis, in an attempt to support workers. However, as the crisis advanced, the protectionist model was abandoned and conditions for dismissal were made more accommodating towards employers, and arguably, the conditions in the labour market and the market in general.

Thus, for example, prior to the beginning of the crisis, in Greece, a **'self-insurance scheme'** was introduced, aimed at workers aged from 55 to 64²²⁵, to enable the dismissed workers to maintain their social and pension insurance after lay-off, and where

²²⁰ Eurostat, 'Employment rates for selected population groups (%)', July 2014, available at: http://ec.europa.eu/eurostat/statistics-explained/images/1/15/Employment_rates_for_selected_population_groups%2C_2003%E2%80%9313_%28%25%29_YB15.png.

²²¹ Stakeholder interview, ETUC, December 2014.

²²² Laven Z. and Santi S., 'EU Austerity and Reform: A country by country table', May 2012, available at: <http://www.europeaninstitute.org/index.php/ei-blog/148-april-2012/1579-eu-austerity-and-reform-a-country-by-country-table-updated-may-3>.

²²³ Paul M. and Duncan P., 'Staffing problems at Department of Jobs due to moratorium on recruitment', Press Release, Irish Times, August 2014, available at: <http://www.irishtimes.com/business/economy/staffing-problems-at-department-of-jobs-due-to-moratorium-on-recruitment-1.1891743>.

²²⁴ The Free Library, 'Bank union rejects early retirement scheme', 2012, available at: <http://www.thefreelibrary.com/Bank+union+rejects+early+retirement+scheme.-a0301816688>.

²²⁵ Thus, according to the scheme, if a worker aged from 55-60 the employer paid 50% and the State funding was provided for the remaining 50%. For workers aged 60 to 64, the employer was expected to pay 80% of the insurance burden.

contributions were paid by the employer and the State. Furthermore, the scheme required that no more than 10% of workers in the age group from 55 to 64 years of age could be collectively dismissed. However, the scheme was abandoned as the crisis advanced.

Conditions for **collective dismissals** were changed in Spain and Greece. In Spain, they no longer require compulsory consultations with workers' representatives, the involvement of the Ministry of Employment and Social Security, nor the corresponding autonomic body. In Greece, the maximum quotas for collective dismissals were increased. In Portugal, conditions for dismissal due to underperformance, or if the position was no longer needed, were made more accessible to employers.

In Spain, the **notice period** for dismissal in cases where a company suffers losses for three consecutive months, or experiences a decrease in income or sales figures for three consecutive trimesters, was reduced in half – from 30 to 15 days. In Greece, the notice period was reduced by up to 80%, e.g. for an employee with 28 years of work experience with the same employer, the notice period was reduced from 24 months to 4 months. Notice periods were also subject to changes in Belgium, where fixed notice periods were introduced to be observed by both the employer and employee when terminating an employment agreement of indefinite duration. The obligation to provide a proper reason for dismissal was also extended, adding some administrative burdens on the employer.

In addition to shorter notice periods, **severance payments were reduced** in Spain and Portugal. Previously, in Greece, there was a rule that the employer either had to give a longer notice period or pay severance wages. However, a drastic reduction in the notice period was introduced, and the severance pay was reduced by half. Furthermore, the employer can pay severance pay in several instalments, and not necessarily before the dismissal becomes effective. This made the **conditions for payment of severance pay** more favourable for the employer, and consequently facilitated the dismissal.

Moreover, in Spain, **severance pay for unfair dismissal was reduced**, while the procedure for such dismissal was simplified, i.e. as long as the employer admitted that the dismissal was unfair. Also, employees who refuse **significantly modified employment conditions** may also be dismissed, subject to severance pay. In Greece and Spain, however, there is no obligation to pay severance pay to employees under probation, regardless of the reasons for dismissal.

In Italy, the possibilities of mandatory reintegration, after successful litigation against the employer, were limited to a restricted number of cases.

6.2.2. Wages

Wages were also the target of direct and indirect interventions in both the **public and private sectors**. While wages in the private sector are normally left to regulation by the market, with some intervention by the State, wages in the public sector are more liable to State regulation. Although developments in each Member State have been different, a number of elements were said to be common, at least to some Member States. These elements included: **repeated cuts** over the years, as the crisis continued; elimination or

reduction of bonuses and additional payments; attempts to **protect the lower paid**²²⁶. In cases where there were no direct cuts, a **freeze on wages** was imposed.

Thus, in Cyprus, Greece and Ireland, wages were cut across the public sector, while in Italy and Portugal, a cut was introduced only for high earners. In Spain, there was an overall reduction of 5%, although for some groups of employees, pay was reduced by more than this for higher paid employees and less than this for the lower paid employees. In Belgium, wages were frozen.

Furthermore, besides the direct cuts, some **indirect burdens** brought about effective reductions in net wages. For example, in Cyprus and Ireland, additional **monthly deductions from the net pay** and pensions of employees in the public sector were introduced on a progressive scale – although in Cyprus, only for those whose salaries exceeded EUR 1,500. Nonetheless, in Cyprus, employees on fixed-term contracts were exempt from the reduction and **promotions without pay rise** were introduced in the public service.

In Ireland, Greece, Spain and Portugal, apart from the wages, cuts were introduced with respect to **additional payments**, such as holiday or Christmas bonuses. **Minimum wages** were affected too and were, thus, subject to a freeze in Greece and Portugal, as well as subsequent cuts in Greece. In Belgium, a general exception to the freeze of pay in public and private sector was provided for low-income earners who do not earn more than the minimum wage.

Furthermore, in Belgium, for example, wages in the private sector were also frozen, though not entirely due to the crisis, but also in order to improve Belgian competitiveness with its neighbours, i.e. Germany, the Netherlands and France. In Ireland, most private sector firms have been freezing basic pay/salary at pre-crisis levels and cutting extra earnings.

6.2.3. Working hours arrangements

Belgium and Spain adopted measures aimed at introducing a temporary **transfer from a full-time to part-time** work regime, where there are economic, organisational or production reasons, or in cases of *force majeure*. In Belgium, and in force until 2011, the measure could only be of a limited duration requiring the consent of the employee concerned. Similarly, the **collective reduction of working hours**, applicable to all employees, or to a specific category of employees, was also possible in Belgium – even without the worker's consent if the employer was a party to a collective agreement. In Spain, employers are entitled to **unilaterally decide on the distribution of 5% of the working hours** – regardless of the job descriptions contained in the employment contracts. In the retail business in Cyprus, **longer working hours** in shops were authorised. In Greece, the possibility of '**rotating employment**', i.e. where employees work fewer days a week or fewer weeks a month or fewer months per year when compared to full employment, was extended to nine months, when the employers' activities are reduced.

²²⁶ European Federation of Public Service Unions (EPSU), 'The wrong target – how governments are making public sector workers pay for the crisis', 2010, available at: http://www.epsu.org/IMG/pdf/Pay_cuts_report.pdf. The countries observed in the report were Czech Republic, Estonia, Greece, Hungary, Ireland, Latvia, Lithuania, Portugal, Romania and Spain, thus overlapping with the present study greatly, and similar trends were noted in the seven presently observed Member States. See also EPSU, 'The wrong target one year on: pay cuts in the public sector in the European Union', January 2012, available at: http://www.epsu.org/IMG/pdf/Wrong_Target_Update.pdf.

A study in Cyprus shows that at least 30% of employers do not keep a working hours schedule, while 72% do not maintain a bill of rights in the service, and 44% do not maintain a schedule of annual leave for their personnel²²⁷.

In Greece and Portugal, **overtime rates were reduced**. In Spain and Greece, part-time staff may now be requested to work **overtime**, under certain conditions. In Spain, this may be expected as long as the total number of hours does not exceed the limit set for part-time jobs. In Greece, previously, employers could not request overtime work from employees who had other employment or family commitments. However, this limitation has now been removed and overtime is no longer paid at an increased rate in Greece.

Greece also increased the opportunities for flexible working time arrangements, while **intermittent employment** was also introduced in the retail business, regardless of whether the store operates with an intermittent or continuous schedule. Furthermore, retail **workers' hours are no longer necessarily connected** to the working hours of the stores.

A reduction in the **minimum period of rest** from 12 to 11 hours in every 24-hour period was introduced in Greece, and the **weekly working time** for public employees was increased from 35 to 40 hours a week in Portugal.

In addition, simultaneously with the loss of jobs, the proportion of **part-time work** grew in all of the observed Member States, e.g. in Ireland and Cyprus, it increased by more than 5%²²⁸. In addition, the regime for part-time employment changed in some countries, i.e. in Greece, the 7.5% surcharge on the salary of part-time employees working less than 4 hours a day was abolished to encourage part-time employment.

6.2.4. Temporary and part-time employment

Temporary employment, understood as dependent employment of limited duration is a combination of temporary agency work and jobs with fixed-term contracts. There are large differences between EU countries in the representation of these two types within the group of temporary employees²²⁹.

Although a freeze on public recruitment was imposed in Cyprus, the hiring of persons on a temporary and/or a part-time contract basis increased in order to fill the gaps created by retirements. In Spain, the automatic **conversion of temporary to fixed-term contracts** was suspended.

The possibilities for the use of fixed-term contracts were expanded in Greece and Italy. In both Member States, the maximum duration of such contracts was set to three years, while

²²⁷From the reports on deliberations of the Labour Committee of the House Parliament. See e.g. Cyprus News Agency, 'SEK: Demands a study on the tourist industry' (in Greek), September 2014; Offsite, 'SEK demands increase of recruitment of Cypriots in the hotelier and tourist industry (*Η ΣΕΚ ζητεί αύξηση των προσλήψεων Κυπρίων στην ξενοδοχειακή και τουριστική βιομηχανία*)' July 2014, available at: <http://offsite.com.cy/sek-ziti-afxisi-ton-proslipseon-kipton-stin-xenodochiaki-ke-touristikhi-viomichania/>; Stockwatch, 'Greek language at the forefront(ελληνική γλώσσα στην πρώτη γραμμή)' December 2014, available at: http://www.stockwatch.com.cy/nqcontent.cfm?a_name=news_view&ann_id=187509.

²²⁸ Eurostat, 'Persons working part-time, age group 15-64', July 2014, available at: http://ec.europa.eu/eurostat/statistics-explained/images/8/8f/Persons_working_part-time_or_with_a_second_job%2C_2003%E2%80%932013_%28%25_of_total_employment%29_YB15.png.

²²⁹ European Foundation for the Improvement of Working and Living Conditions (Eurofund), 'Impact of the crisis on working conditions in Europe', 2013, p. 14, available at: http://eurofound.europa.eu/sites/default/files/ef_files/docs/ewco/tn1212025s/tn1212025s.pdf.

in Italy, the requirements for employment on a fixed-term contract were relaxed to make it easier for employers to hire workers on fixed-term contracts. In Italy, no more than 20% of staff may be on a fixed-term contract.

There are also strong indications that there is an expanding pool of **'peripheral workers'** in Cyprus, who work in the equally expanding field of research and on **part-time/fixed-term teaching contracts**. There are various workers categorised as "Special Teaching Staff" and "visiting lecturers", both in public and private universities and colleges. In addition, there is an increasing number of "flexible staff", who are often given different academic titles, but with whom the employer has entered into individual contractual agreements, i.e. they are not obliged to provide the worker with stable employment, but only casual work if and when it arises.

6.2.5. Involuntary mobility

Together with cuts in jobs and wages, one of the important measures that was primarily aimed at public sector workers was the increase in **mobility**. Thus, in Cyprus, Spain and Greece, interventions **towards facilitating workers' mobility were recorded**. In Cyprus, one-in-three workers in the public sector will be faced with interchangeability, which should lead to an increase from the current 19% to 28% of public employees subject to interchangeability.

In Greece, the **'labour reserve' scheme**, which existed for the private sector even before the crisis, was extended to public enterprises and State entities – while the conditions for its application were simplified. According to the scheme, employees declared to be surplus staff would be placed on a labour reserve for a certain period of time, i.e. initially up to a year and exceptionally for two years – which was later reduced to eight months, and would be paid a certain percentage of their salary, i.e. up to 75%. After being subject to an evaluation process, they could be placed in another position in the public sector or be fired. The scheme was subsequently amended, and under the new scheme, civil servants and employees with contracts of indefinite duration in the public sector, whose positions are eliminated, can be mandatorily transferred to other positions, cover the temporary needs of the core or broader public sector, or follow training. During the labour reserve period, employees are also considered as having mobility status, in the sense that, if possible, they will be transferred to another position. They can also be requested to attend training, if that was expected from them. Nonetheless, within the period they are not provided with a new position, **they are considered as 'laid-off'**.

Similar measures were introduced in Belgium, where the scheme of **temporary lay-offs** for white collar workers was introduced. According to the scheme, companies in difficulty totally, or partially, suspend the execution of the employment contract of their employees for a specific limited period. During this period, the employees receive unemployment benefits from the State and a financial supplement paid by the employer in order to limit their loss of income.

An **unexpected mobility scheme** was introduced in Spain. According to this scheme, companies are no longer obliged to justify assignments of tasks belonging to a professional **category which is inferior to an employee's own category**. However, in the event of substantial individual modifications to employment conditions, the employer must notify the employee, who then can either agree to the modification or terminate the contract – with redundancy compensation.

6.2.6. Unemployment protection

Together with relaxing the conditions for dismissal and making the entire labour environment more flexible for employers, unemployment protection levels have changed across the observed Member States.

In particular, in Belgium, unemployment **benefits were reduced** several times, and are now slightly above the social assistance benefits – with some exceptions for: the temporarily unemployed, certain categories of elderly unemployed: those with long tenures: unemployed persons with disabilities. The eligibility conditions have also been **changed. Stricter conditions were imposed on the definition of 'suitable job' in order to keep** benefits, and restrictions were introduced on benefits for school leavers. In addition, benefits for career breaks and the time-credit system-with-justification, i.e. to care for a young child or sick family member, have also been restricted.

Italy, however, reformed its benefits system by introducing social employment insurance (ASPI). This replaced several pre-existing schemes and introduced **increased protection** for workers by providing longer periods for the receipt of benefits, and higher amounts.

In Spain, employees in cases of **suspension of contract or reduction of working time**, have the right to unemployment benefits during their unemployment/suspension period. However, this is subject to an upper limit of 180 days and certain conditions.

Ireland introduced reductions to **professional training programmes** for jobseekers, while the Training Allowance for new entrants not entitled to Jobseeker's Benefit, was abolished. In Greece, participants in the labour reserve scheme can be requested to follow training. Both Belgium and Italy introduced an **enhanced follow-up for job seekers** – threatening the loss of benefits in cases of unsatisfactory follow-up, i.e. the failure of the benefit user to prove to be actively searching for a job.

6.2.7. Vulnerable groups of workers

In Ireland, approximately EUR 10 million in EU funding for **gender equality measures**, has been redirected to other labour market programmes²³⁰.

In Cyprus, a bill was debated – purporting to introduce the **Greek language** and other professional requirements to persons working in the hotel industry. In addition, more **restrictive immigration policies** were introduced in an attempt to protect domestic workers. These policies included a quota on foreign workers²³¹ and giving advantage to persons lawfully and permanently domiciled in Cyprus for a period of five years²³².

In Cyprus, **EU citizens** are being employed in hotels on trainee contracts with 'all inclusive packages' in order to displace other workers who are regularly employed, because trainees have no contract and are not bound by collective agreements²³³.

²³⁰ National Women's Council of Ireland, 'Submission to Budget 2011', 2010, available at: http://www.nwci.ie/download/pdf/pre_budget_submission_2011.pdf.

²³¹ The idea of introducing quota was prevented by the intervention of the Cypriot Ombudsperson.

²³² Stockwatch, 'Anastasiades' 48 measures for the economy (48 μέτρα Αναστασιάδη για οικονομία)', April 2013, available at: http://www.stockwatch.com.cy/nqcontent.cfm?a_name=news_view&ann_id=172687.

²³³ Equality Body report (2011), 'Position of the Equality Authority regarding the violation of the principle of equal treatment between Cypriots and union workers at the hotelier industry', File Number A.I.T 1/2011, June 2011, available at: <http://www.no-discrimination.ombudsman.gov.cy/ektheseis-aki>; see also Cyprus News Agency

Also in Cyprus, the largest proportion of part-time contracts for teaching staff is concentrated at the bottom of the academic hierarchy. This suggests that the trend towards the increase in precarious work mainly affects **newcomers into the profession**, who are prepared to work under inferior working conditions because of the high youth unemployment rate.

6.3. Measures taken in alleviation of austerity measures affecting the right to work

6.3.1. Job placement

Ireland launched a few schemes to assist job placement. For instance, the Pathways to Work strategy introduced a new integrated employment and support service involving the **transformation of local social welfare offices into a 'one-stop-shop' enabling jobseekers** to access their entitlements and receive help with planning their return to work²³⁴. Furthermore, the multi-annual Action Plan for Jobs aims to have 100,000 more people in work by 2016, and 2 million people in work by 2020, through the introduction of additional employment support measures²³⁵.

In Spain, the regime of the **re-employment unit mechanism** which already existed before the crisis, was amended to ensure that any businesses with 20 or more workers, that announce an intention to carry-out collective lay-offs, must set up special re-employment units. Through these units, employers guarantee outplacements for all workers affected by the lay-offs. The employers are committed to paying a reclassification allowance for all of the workers affected that have a minimum seniority of one year.

Furthermore, Greek regulation of **temporary agency work** has significantly changed in the course of the crisis – with the objective of providing businesses with the necessary flexibility to adjust to the upswing in economic activity and changes in their hiring needs. Simplified conditions for the establishment and operation of temporary work agencies were introduced, and the scope of their activities was broadened. Further reforms provided for some of the conditions to be relaxed, thus, enabling a temporary worker to provide his/her services to an indirect employer.

6.3.2. Tax relief and other incentives for employers

In Belgium, Italy, Ireland and Spain various measures were introduced to provide a general **reduction of the fiscal burden** for either the employers or the employees.

(2014) 'He hired Union workers in exchange for food and board instead of a salary' (Πάφος: Προσέλαβε κοινοτικούς και τους παρέχει για μισθό φαγητό και διαμονή), June 2014, available at: <http://www.alfanews.com.cy/kypros/item/2027-%CF%80%CE%AC%CF%86%CE%BF%CF%82-%CF%80%CF%81%CE%BF%CF%83%CE%AD%CE%BB%CE%B1%CE%B2%CE%B5-%CE%BA%CE%BF%CE%B9%CE%BD%CE%BF%CF%84%CE%B9%CE%BA%CE%BF%CF%8D%CF%82-%CE%BA%CE%B1%CE%B9-%CF%84%CE%BF%CF%85%CF%82-%CF%80%CE%B1%CF%81%CE%AD%CF%87%CE%B5%CE%B9-%CE%B3%CE%B9%CE%B1-%CE%BC%CE%B9%CF%83%CE%B8%CF%8C-%CF%86%CE%B1%CE%B3%CE%B7%CF%84%CF%8C-%CE%BA%CE%B1%CE%B9-%CE%B4%CE%B9%CE%B1%CE%BC%CE%BF%CE%BD%CE%AE.html>.

²³⁴ European Commission, 'National Reform Programme Ireland', April 2014, available at: http://ec.europa.eu/europe2020/pdf/csr2014/nrp2014_ireland_en.pdf.

²³⁵ European Commission, 'National Reform Programme for Ireland 2013 Update under the Europe 2020 Strategy', February 2013, available at: http://ec.europa.eu/europe2020/pdf/nd/prgprep2013_ireland_en.pdf.

In Belgium, a reduction in social security contributions on **night and shift work** and a reduction of taxes on a certain number of hours of **overtime** per year, were introduced. Furthermore, **low-income earners** also benefit from tax reductions which will have the effect of increasing their net income.

In Italy, the initial higher social contributions are to be paid by the employer, with certain exceptions for fixed-term contracts. However, these additional contributions are reimbursed to the employer if the employee is subsequently hired on a permanent basis. The measure aims to, on the one hand, simplify the rules applicable to fixed-term contracts, and on the other hand, to **encourage permanent employment**.

Ireland introduced a scheme that **exempts employers from the liability to pay** their share of social insurance contributions for certain employees, for 12 months²³⁶, while another was launched that rewards employers who employ jobseekers listed in the national monthly report recording persons registered for benefits²³⁷. Furthermore, employers can no longer claim a **redundancy rebate** for any statutory redundancy payments made after 1 January 2013, which should discourage them from dismissing employees²³⁸.

Spain created a new category of Permanent Contract to Support Entrepreneurs and SMEs aimed at giving companies, with less than 50 employees, **financial incentives** to hire new workers in a cheaper way, through tax reductions and discounts in social security contributions. It is also easier to dismiss new workers during the first year – which is understood as a probation period. Furthermore, telecommuting rights were expanded, and tax deductions were made available to companies of less than 50 employees who transform professional contracts, relief contracts and interim contracts **into permanent contracts**.

In addition, in Spain during the period July 2009 to January 2011, the **restructuring card** system was in place. The card was given to workers who had lost their jobs in the context of bankruptcy, liquidation or closure of a company. An employer, who employed someone **with such a card, received a temporary reduction in employers' contributions**. The employees themselves received a higher net wage, as a consequence of a reduction in the **employee's social security contributions**. Furthermore, several measures reduced wage costs for certain categories of workers. The demand for younger workers was stimulated via the Win-Win plan from January 2010 until the end of 2011, which introduced full or partial exemption from social security contributions for **younger workers**, where the degree of exemption depended on age, education level, and length of unemployment. The Win-Win plan also targeted **older unemployed and long-term unemployed** persons.

²³⁶ Citizens Information, 'Employer Job (PRSI) Incentive Scheme', July 2013, available at: http://www.citizensinformation.ie/en/social_welfare/irish_social_welfare_system/social_insurance_prsi/employer_job_prsi_incentive_scheme.html; Tajzman D., Saget C., Elkin N., and Gravel E., 'Rights at work in times of crisis: Trends at the country level in terms of compliance with international labour standards', ILO Employment Working Paper No. 101, 2011, available at: http://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_elm/documents/publication/wcms_167804.pdf. The scheme ceased on 30 June 2013 for new participants.

²³⁷ Department of Social Protection, 'JobsPlus', November 2013, available at: <https://www.welfare.ie/en/Pages/Jobs-Plus.aspx>.

²³⁸ Freshfields Bruckhaus Deringer LLP, 'Labour market reforms tracker', winter 2014, p. 22, available at: http://www.freshfields.com/uploadedFiles/SiteWide/Knowledge/36432_Labour_Market_Reforms_Interactive.pdf.

6.3.3. Traineeships

Various schemes were introduced to encourage employment of young workers, who are at the beginning of their careers. The national studies identified such measures in Greece, Ireland, Italy and Spain.

The Kenny Government, in Ireland, launched a **national internship scheme**, JobBridge, which was intended to provide 5,000 internship placements of six-to-nine-months duration.

In Italy, certain changes were introduced, aiming to **promote the use of the traineeship contracts** to hire young workers, while at the same time avoiding abuses thereof. Thus, not more than three apprentices can be employed for any two specialised employee places, and hiring new apprentices is only possible if at least 50% of the previous apprentices have been permanently hired. Termination of the apprenticeship is only possible if duly justified.

In Spain, the rules regarding **training and learning contracts** were amended to reduce the high levels of unemployment among young people. Thus, the age limit to be eligible for this contract was raised to 25 years – from the previous limit of 21 years. In addition, an exceptional measure was established: as long as the unemployment rate in Spain is over 15%, training and learning contracts may be signed with workers up to the age of 30 years. Moreover, a new minimum duration, i.e. from six months to one year, and a new maximum duration, i.e. from two years to three years, were set for this type of contract. Furthermore, training and learning contracts can now be renewed under certain conditions.

6.3.4. Professional training

The National Reform Programme 2012²³⁹, provided conversion courses to **up-skill/re-skill the unemployed** to meet skills shortages in new and emerging sectors in Ireland.

Spain introduced **a temporary programme of professional qualification** for people who have received all of their unemployment benefits from active employment policies and the receipt of financial aid in 2011. In 2012, the programme was extended regarding the allocation of financial aid, but was modified in terms of introducing an increase in financial aid – but first requiring proof of active job search.

6.3.5. Self-employment

In 2014, more than 30 million people were self-employed in the EU²⁴⁰. The phenomenon of such dimensions necessarily captured the attention of the European Parliament, which adopted a report²⁴¹, followed by a resolution²⁴² on the social protection for all – including self-employed workers.

²³⁹ European Commission, 'National Reform Programme for Ireland 2012 Update under the Europe 2020 Strategy', February 2013, available at: http://ec.europa.eu/europe2020/pdf/nd/nrp2012_ireland_en.pdf.

²⁴⁰ Eurostat, 'Self-employment by sex, age and economic activity (from 2008 onwards, NACE Rev. 2)', last update 9 January 2015, available at: http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=lfsq_esgan2&lang=en.

²⁴¹ European Parliament, 'Draft Report on social protection for all, including self-employed worker', 2013/2111 (INI), September 2013, available at: http://www.europarl.europa.eu/meetdocs/2009_2014/documents/empl/pr/1004/1004729/1004729en.pdf.

²⁴² European Parliament, 'Resolution on social protection for all, including self-employed workers', 2013(INI), December 2013, available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A7-2013-0459+0+DOC+XML+V0//EN>.

In Ireland and Spain, incentives were introduced to promote self-employment. Thus, in Ireland, the Start your own Business Scheme, introduced in 2014, helps to promote entrepreneurship and support SMEs²⁴³.

In Spain, the **full capitalisation (a one-time payment) of the unemployment benefit** is now available to young workers up to the age of 30, and women up to the age of 35, who start an economic activity as self-employed workers. Before the amendments, only the capitalisation of 80% of the benefit was possible. Also, in 2013, further measures were implemented by the Rajoy Government in Spain to promote **self-employment among young people**, i.e. individuals aged 30 and younger. The adopted measures include reduced social security contributions and extended unemployment benefits for the self-employed²⁴⁴.

In Italy, a reform was initiated to prevent the fraudulent use by employers of **economically dependent self-employed workers**. The use of such contracts is **advantageous for employers because they do not have to pay the workers' social security contributions**, and such workers are not entitled to paid annual or sickness leave – among other possible entitlements of employed staff. The reform introduced limited conditions for the use of such arrangements, including a limited duration of cooperation, i.e. not more than eight months in a year, a limited share of income, i.e. up to 80% of the declared **annual income, and the requirement that the worker cannot work in the employer's premises**. Similar schemes are used in some other Member States, notably in Spain and Belgium – however, no interventions were made to discourage the practice.

6.3.6. Part-time and temporary work

In Spain, the **contract for hire or contract of service** (previously limited to three years) is now extendable by another 12 months upon agreement. However, penalties are introduced in cases of **chaining temporary contracts**. Namely, the employee will become **permanent after two years if they have had two or more contracts for the same or "a different" workplace in the same company 'or group of companies', and they will be given an increased severance payment**.

Greece introduced a general requirement of **equal treatment of part-time and full-time employees**, unless there are objective reasons which justify such a differentiation, e.g. different working hours.

In Ireland, measures were introduced to ensure that people in part-time employment are **incentivised to take up full-time employment** when such opportunities become available.

²⁴³ See Office of the Revenue Commissioners, 'Start your own business relief', January 2014, available at: <http://www.revenue.ie/en/tax/it/reliefs/own-business-scheme/index.html>; Department of Finance, 'Budget 2014 Leaflet', 2014, available at: <http://budget.gov.ie/Budgets/2014/Documents/Budget%20leaflet%202014%20-%20web%20version.pdf>.

²⁴⁴ ILO, 'Spain – Growth with jobs', 2014, available at: http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_309955.pdf.

6.3.7. Vulnerable groups of workers

Apart from the measures mentioned in the previous sections, which may have been targeted towards particular groups of workers, there have been other measures introduced to ensure better protection of vulnerable groups which do not fit within the above categories. In Belgium, following the ruling of the Constitutional Court, the Parliament adopted the Act regarding the introduction of a unified status for blue and white collar workers, with respect to: notice periods, non-refundable sick leave, and related policy measures. Thus, the first day of unpaid sickness leave, which previously applied only to blue collar workers, was abolished. Companies are also required to maintain or increase employment of workers aged 45 and over.

Also in Belgium, while a general freeze on salary increase was introduced across the public and private sector, exceptions are ensured for **low-income earners** who do not earn more than the minimum wage. Furthermore, a proportionality principle was introduced in cases of dismissal, aimed at proportional spread of collective dismissals over **all age groups**. Moreover, enterprises will have to present annually to the Works Council an **employment of elderly workers** plan, i.e. maintaining or increasing the number of workers aged 50 and above.

Given the record unemployment rates of young people in Spain, many measures were targeted towards this particular group. Thus, the contract for the promotion of employment (*contrato de fomento del empleo*) was reformed. This type of contract was launched in 2001 for people aged 16 to 30, but was, however, also aimed at people aged **45 and over, unemployed women, people having been unemployed for more than six months, and disabled people**. With the reform, the conditions for access to such contracts were made more favourable, the categories of workers who qualify were expanded, severance pay was increased, and the participation of the State in the payment of severance ensured. Also in Spain, when taking partial retirement, the retiring worker can be given more favourable conditions for retirement if employment of a **younger worker** is secured (see section 7.2.2).

6.4. Impacts of the measures affecting the right to work

6.4.1. Job loss

Job loss was probably the most visible impact of the crisis – not only on the right to work, but more generally, on fundamental rights. While not all of the EU Member States experienced an increase in unemployment rates, the observed countries in the present study did. In relation to austerity measures, this impact was both direct, i.e. coming directly from the measures aimed at either decreasing or increasing the number of employed, and indirect, i.e. the consequences of changing labour markets in changing economies.

According to research by Eurofound, **job insecurity increased significantly** in Greece between 2007 and 2012. In 2007, 8.2% of workers thought it was very likely, or quite likely, that they would lose their job within the next six months. In 2012, this percentage had risen to 30.57% – the second highest increase in the countries under review²⁴⁵.

²⁴⁵ Eurofund, 'Impact of the crisis on working conditions in Europe', 2013, p. 9-10, available at: http://eurofound.europa.eu/sites/default/files/ef_files/docs/ewco/tn1212025s/tn1212025s.pdf.

Direct impact was more visible in **the public sector**, where measures were adopted to decrease the number of public employees. However, not every job loss in the public sector can be attributed to the crisis. In most EU Member States, employment in the public sector was on the rise before the crisis. For example, in Greece and Portugal it was on constant rise from 1999 to 2008. In Spain, it stagnated from 1999 to 2006, when it started falling. Nevertheless, in Italy the share of employment in the public administration was in decline long before the crisis, in fact, since 1999. The share fell from an average of 8.6% to 6% until 2008²⁴⁶. The rate of employment in the public sector in Italy, Spain and Cyprus then continued to shrink from 2008 to 2010, although it was on the rise in Belgium and Portugal in the same period²⁴⁷.

In Ireland, for instance, the number of staff at the Department of Jobs dropped from 1,075 at the end of 2008 to 783 by the middle of June 2014²⁴⁸. This is directly linked to the moratorium on recruitment and the reduction in public service staff. The labour reserve scheme in Greece is said to have affected between 1,750 and 3,000 employees in the public sector.

6.4.2. Job creation

Not all of the measures imposed were necessarily negative. As mentioned previously, a number of measures were introduced towards **creating new jobs**. In Ireland, for example, the JobsPlus scheme has helped create over 1,000 new full-time jobs since its launch in July 2013²⁴⁹. In Belgium, the number of new employment contracts supported by the activation of the temporary Win-Win plan greatly increased, with more than 50,000 new employment contracts concluded under the scheme by the end of 2011.

There were other measures which, despite expectations, **did not have the desired effect**. For example, the Spanish scheme of permanent contract to support entrepreneurs and SMEs actually resulted in a decrease of those contracts by 2.2%, rather than the expected increase. In Cyprus, the prolongation of opening hours for retail businesses was expected to create new jobs. However, this policy only yielded about 800 new jobs so far, as employers tend to put pressure on their employees to work longer hours – often without overtime pay, rather than hire new personnel.

6.4.3. Wages

The measures imposed on wages necessarily affected employees. Even just a freeze in wages inevitably brought the loss of buying power, bearing in mind inflation rates and price increases. Thus, for example, in Spain between June 2010 and December 2010, when pay in the public sector was cut, prices rose by 4.4%. This implies that there has already been

²⁴⁶ Glassner V., 'The public sector in the crisis', ETUI Working Paper December 2010, p. 8, available at: <http://www.etui.org/content/download/1914/21671/file/WP2010+07+EN+WEB.pdf>.

²⁴⁷ Glassner V., 'The public sector in the crisis', ETUI Working Paper December 2010, p. 9, available at: <http://www.etui.org/content/download/1914/21671/file/WP2010+07+EN+WEB.pdf>.

²⁴⁸ Paul P. and Duncan P., 'Staffing problems at Department of Jobs due to moratorium on recruitment', Press Release, Irish Times, August 2014, available at: <http://www.irishtimes.com/business/economy/staffing-problems-at-department-of-jobs-due-to-moratorium-on-recruitment-1.1891743>.

²⁴⁹ Department of Social and Family Affairs, 'JobsPlus helps create over 1,000 new jobs since its launch', undated, available at: <http://www.welfare.ie/en/pressoffice/pdf/pr291113.pdf>.

almost a 10% cut in the real value of pay in the public sector²⁵⁰. In the private sector, in Spain since 2009, hourly wages fell at a rate of 1.8% per year.

In Ireland, the 2008 national pay agreement providing pay rises in the private and public sectors of 6% over 21 months, was abandoned by many employers because they could not afford to pay the agreed increases. **New public sector workers** have also been badly affected since lower rates of pay have been introduced.

Between January 2010 and January 2013, **public sector pay has declined by over 25%** on average, in Greece, public sector recruitment has been frozen, and labour laws have been substantially deregulated. Furthermore, in the **private sector, wages had decreased by at least 15%** in 2013 and, following the new minimum wage regulation, they were expected to decrease even more.

In addition, the apprenticeship contracts in Greece eventually brought the establishment of **sub-minima wages for the youth**.

6.4.4. Working conditions and job security

Just before the crisis, the EU embraced the **flexicurity concept**²⁵¹. Despite ambition, however, such an integrated approach, which combines flexibility reforms with security enhancements, has not come into the forefront since the crisis – indeed the reverse is true²⁵².

Some measures, even though not directly aimed at changing or deteriorating working conditions, have collaterally brought about such consequences. Thus, in the private sector in Cyprus, a number of schemes subsidising the hiring of unemployed persons, or persons from other vulnerable groups, have brought a **general deterioration in the terms of employment of all workers**, who are forced to accept inferior working conditions to be able to compete with persons hired under the aforesaid schemes. Furthermore, as mentioned above, the extension of working hours in the retail sector, rather than creating new jobs, led to a deterioration of working conditions for retail workers who are now expected to work **longer hours**. Also in Cyprus, **undeclared work** in the hotel industry has reached 20%, with 34% in night clubs²⁵³.

²⁵⁰ EPSU, 'The wrong target one year on: pay cuts in the public sector in the European Union', p. 38, available at: http://www.epsu.org/IMG/pdf/Wrong_Target_Update.pdf.

²⁵¹ On the concept of flexicurity see e.g. European Commission, 'Flexicurity in Europe: Administrative Agreement JRC N°31962-2010-11 NFP ISP - FLEXICURITY 2', Final report, 2013, available at: <http://ec.europa.eu/social/BlobServlet?docId=10227&langId=en>.

²⁵² Eurofund, 'Impact of the crisis on the working conditions in Europe', 2013, p. 66, available at: http://eurofound.europa.eu/sites/default/files/ef_files/docs/ewco/tn1212025s/tn1212025s.pdf.

²⁵³ From deliberations of the Labour Committee of the House Parliament; Cyprus News Agency, 'SEK: Demands a study on the tourist industry (ΣΕΚ: Ζητά μελέτη για την τουριστική βιομηχανία)', September 2014, available at: <http://www.sigmalive.com/news/local/159914/sek-zita-meleti-gia-tin-touristiki-viomixania>; Offsite, 'SEK demands increase of recruitment of Cypriots in the hotelier and tourist industry (ΣΕΚ ζητεί αύξηση των προσλήψεων Κυπρίων στην ξενοδοχειακή και τουριστική βιομηχανία)', July 2014, available at: <http://offsite.com.cy/sek-ziti-afxisi-ton-proslipseon-kiprion-stin-xenodochiaki-ke-touristiki-viomichania/>; Stockwatch, 'Greek language at the forefront' (ελληνική γλώσσα στην πρώτη γραμμή)', December 2014, available at: http://www.stockwatch.com.cy/nqcontent.cfm?a_name=news_view&ann_id=187509.

6.4.5. Temporary and part-time contracts

Despite predictions, the expected decrease in temporary contracts, which in Spain remains rather high, seems to have failed to materialise. Indeed, involuntary temporary employment increased from 87.2% in 2008 to 91.7% in 2013. Involuntary part-time employment is also on the rise, and has become a pressing problem in Spain since the beginning of the crisis. Accordingly, the share of part-time workers that would rather have a full-time job increased from 36.0% to 63.3% between 2008 and 2013.

Part-time employment is also on the rise in Greece. While in 2001, only 4% of the total workforce consisted of part-time workers – in the last quarter of 2011, this had risen to 7.1%, and **full-time contracts were converted to part-time** employment or rotating employment contracts.

The **moratorium on recruitments** in the public sector in Cyprus has led to an increased number of people being employed on fixed-term contracts.

In Italy, **labour relations reforms** were evaluated as not contributing to reducing market fragmentation, or mitigating the impact of the economic crisis on the labour market, and **finding that 'flexibility in Italy continues to act like a trap which blocks workers who enter the market with atypical contracts into a permanent state of job insecurity'²⁵⁴. In fact, the year of the reform saw an increase of 11%, on a yearly basis, in the dismissal of workers. Of the workers who were hired, about two-thirds had fixed-term contracts and less than one-fifth had permanent contracts. Only 5% of temporary workers obtained permanent contracts. In contrast, 22% had an even worse contract. The use of apprenticeship contracts was limited, i.e. only 2.5% of the total workers hired. Other flexible contracts were down by about 20-25%.**

6.4.6. Self-employment

In Spain, measures in the field of self-employment have kept the number of self-employed stable since 2011. Nevertheless, it should be stressed that the share of economically dependent self-employed persons is considerably higher than in the fourth quarter of 2013 at 18.4%²⁵⁵. In Italy a significant increase in the number of economically dependent self-employed persons was recorded.

6.4.7. Vulnerable groups

The interventions with the right to work have impacted different groups to varying degrees. In all the Member States observed, some groups of people were more affected by some measures, than others. This is an overview of such disproportional effects.

²⁵⁴ Di Domenico G. and Scarlato M., 'Evaluation of labour market reform by means of quantitative tools (*Valutazione di interventi di riforma del mercato del lavoro attraverso strumenti quantitativi*)', 2014, available at: http://www.dt.tesoro.it/export/sites/sitodt/modules/documenti_en/analisi_progammazione/brown_bag/DiDomenico_Scarlato_13022014.pdf.

²⁵⁵ ILO, 'Spain – Growth with jobs' 2014, pp. 93-95, available at: http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_309955.pdf.

The growing trend of part-time work has affected **women more than men**, given that there are generally more women working part-time²⁵⁶. Furthermore, women – particularly single mothers, encounter specific obstacles that prevent them from participating on an equal basis in the work market in Ireland²⁵⁷. For example, the cost of childcare acts as a significant barrier to female participation in the workforce²⁵⁸. In Greece, unemployment of women rose significantly during the crisis, i.e. one-out-of-four women in employment, in Greece, holds a tenured position in the public sector, thus, the risk is much higher that women – not employed in the public sector, become unemployed.

Growing **unemployment disproportionately affected the young**, i.e. youth unemployment rates exceeded the overall unemployment rate by more than 100%. Youth unemployment is particularly an issue in Spain and Portugal, where the unemployment rate of the under 25s is more than 53% and 34%, respectively²⁵⁹. Younger workers were also more affected by the growing rate of **temporary work** in Cyprus.

The Spanish Employment Strategy 2012-2014 suppresses a series of contractual allowances for employers hiring **people with disabilities**. People with disabilities also face challenges in accessing the labour market in Ireland, and were disproportionately affected, particularly because of the moratorium on recruitment in the public sector²⁶⁰.

Migrants and Travellers also face difficulties in accessing employment in Ireland. The **travellers' unemployment rate stood at 84% in 2011, compared to 8.4% in 2006**²⁶¹, whereas migrants tended to be in more informal employment, often under precarious conditions which exposed them to wage decreases and redundancies during the crisis²⁶². In Greece, migrants have also been particularly affected by the financial crisis as many of them used to work in the informal sector, but due to the economic crisis, have since lost their jobs.

A substantial slowdown in real wage growth was recorded in Spain. Since 2009, hourly wages fell at a rate of 1.8% per year, which had notoriously affected **low-paid workers**. In Cyprus, precarious work affected **retired people** disproportionately, as they do not have recourse to the Law on Termination of Employment. Intervention measures affected **single people** more than other groups of the population in Belgium, since the increased risk of poverty was more noticeable in relation to this group.

²⁵⁶ Eurostat, 'Persons employed part-time', July 2014, available at: http://ec.europa.eu/eurostat/statistics-explained/images/2/2d/Persons_employed_part-time%2C_age_group_15%E2%80%93364%2C_2013_%281%29_%28%25_of_total_employment%29_YB15.png.

²⁵⁷ UN GA, Report of the independent expert on the question of human rights and extreme poverty, Magdalena S pulveda Carmona M: Addendum – Mission to Ireland, UN Doc. A/HRC/17/34/Add.2, May 2011, available at: http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.34.Add.2_en.pdf.

²⁵⁸ Center for Economic and Social Rights, 'Mauled by the Celtic Tiger: Human rights in Ireland's economic meltdown: Rights in crisis briefing paper', February 2012, available at: http://www.cesr.org/downloads/cesr_ireland_briefing.12.02.2012.pdf.

²⁵⁹ Eurostat, 'Seasonally adjusted unemployment', November 2014, available at: http://ec.europa.eu/eurostat/statistics-explained/images/a/a4/Unemployment_statistics_complementary_tables_November_2014.xls.

²⁶⁰ National Disability Authority, 'Disability and work: The picture we learn from official statistics', undated, available at: <http://nda.ie/Publications/Employment/Employment/Employment-Publications/Disability-and-Work-The-picture-we-learn-from-official-statistics/>.

²⁶¹ Financial Times, 'Ireland's travellers bear brunt of austerity', April 2013, available at: <http://www.ft.com/intl/cms/s/0/c963d0c2-b0e6-11e2-80f9-00144feabdc0.html#axzz3DmFPGElr>; Pavee Point Travellers' Centre, 'Pre-budget submission for budget 2011, September 2010, available at: <http://paveepoint.ie/pdf/FPPFinalPBS240910.pdf>.

²⁶² Financial Times, 'Ireland's travellers bear brunt of austerity', April 2013, available at: <http://www.ft.com/intl/cms/s/0/c963d0c2-b0e6-11e2-80f9-00144feabdc0.html#axzz3DmFPGElr>; Pavee Point Travellers' Centre, 'Pre-budget submission for budget 2011, September 2010, available at: <http://paveepoint.ie/pdf/FPPFinalPBS240910.pdf>.

7. IMPACT OF AUSTERITY MEASURES ON THE RIGHT TO A PENSION

KEY FINDINGS

- The study looks into the right to a pension – understood as an acquired right and protected under the general rules applicable to the protection of property rights.
- Pension systems were already subject to revision before, and independently of, the crisis. However, the crisis also influenced the creation of the new policies to a significant extent.
- All of the seven observed Member States have made interventions into the right to pension. The reforms appear to have been most overwhelming in Greece.
- In Greece, Ireland and Portugal, systemic changes were introduced to reform the functioning of the pension system. In addition, other measures were introduced, including those related to: pension age and the seniority requirement; the calculation and revaluation of pensions; cuts in the amounts of pensions already awarded; rules applicable to work after retirement.
- Pensioners can be seen as a vulnerable group. However, some pensioners are more vulnerable than others, and have been subject to specific measures, such as the measures introducing the new scheme of guaranteed minimum income in Cyprus, and the new rules introduced regarding the pensions of parents of children with disabilities.
- The measures taken in alleviation mostly concern the encouragement of workers to stay longer in the workforce. In Ireland, an obligation was adopted for private employers to introduce a pension scheme for employees, whilst in Greece, people with disabilities were spared from cuts in pensions. In most Member States, people employed in arduous work are either implicitly, or explicitly, provided with preferential conditions for pensions, and those preferences have not been removed through austerity.
- Impacts of austerity measures on the right to a pension may be seen in decreased State expenditure on pensions, decreased life standards for many pensioners, long-term expected impacts, and further decreases in life standards of future pensioners.
- Specific impacts were identified in Greece, where numerous and frequent changes have brought legal certainty into question. Furthermore, administrative proceedings on pension requests are lengthy, leaving people without incomes for up to two years, before their requests are dealt with.
- Some measures have disproportionately affected repatriated elderly people, low-income workers and women, with one particular measure affecting the right to pension entitlement of parents of children with disabilities.

7.1. The right to a pension as a property right

'The Court reiterates that Article 1 of Protocol No. 1 to the Convention does not create a right to acquire property. It places no restriction on the Contracting States' freedom to decide whether or not to have in place any form of social security or pension system, or to choose the type or amount of benefits or pension to provide under any such scheme. However, where a Contracting State has in force legislation providing for the payment as of right of a welfare benefit or pension – whether conditional or not on the prior payment of contributions – that legislation must be regarded as generating a proprietary interest falling within the ambit of Article 1 of Protocol No. 1 for persons satisfying its requirements. Therefore, where the amount of a benefit or pension is reduced or eliminated, this may constitute an interference with possessions which requires to be justified in the general interest²⁶³.

The right to a pension is not specifically guaranteed by the EU Charter or any other principal international human rights instrument²⁶⁴. However, if understood as a form of the right to property, the right to pension is protected by Article 17 of the EU Charter, Article 1 of Protocol No. 1 to the ECHR and Article 17 of the UDHR. In the doctrine of the ECtHR, the right to a pension is mostly observed through the prism of the so called acquired rights. Article 34 of the EU Charter provides for the right to social security coverage, thus, also covering to a certain extent, the right to pension.

On several occasions, the ECtHR has found that, where a State has legislation in force providing for the payment of the right of a pension – whether or not conditional on the prior payment of contributions, that legislation has to be regarded as generating a proprietary interest falling within the ambit of Article 1 of Protocol No. 1 for persons satisfying its requirements²⁶⁵. The reduction or the discontinuance of a pension may, therefore, constitute an interference with peaceful enjoyment of possessions that need to be justified²⁶⁶. This means that, while there is no abstract guarantee to receive a pension, **once the pension is granted, it becomes an 'acquired right' and, thus, a possession, within the meaning of the ECHR²⁶⁷.**

²⁶³ ECtHR, *Pejić v. Serbia*, no. 34799/07, judgment of 8 October 2013, §54 and sources cited therein, available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-126798>.

²⁶⁴ There are some international guarantees towards the pension claims in several ILO conventions, however under limited conditions. See e.g. Article 4 of the Old-Age Insurance (Industry etc.) Convention, 1933 (No. 35), Article 4 of the Old-Age Insurance (Agriculture) Convention, 1933 (No. 36) or Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128). For a full list of ILO conventions, please see ILO Normlex, available at: <http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12000:0::NO::>.

²⁶⁵ See e.g. ECtHR, *Carson and Others v. the United Kingdom [GC]*, no. 42184/05, judgment of 16 March 2010, § 64, available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-97704>, or *Gaygusuz v. Austria*, case no. 17371/90, judgment of 16 September 1996, §41, available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58060>. For an extended list of references to the regime of 'acquired rights' see e.g. ECtHR, *Grudić v. Serbia*, case no. 31925/08, judgment of 17 April 2012, §72, available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-110378>.

²⁶⁶ See e.g. ECtHR, *Rasmussen v. Poland*, no. 38886/05, § 71, judgment of 28 April 2009, available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-92429>.

²⁶⁷ It needs to be noted, though, that the acquired rights in the ECtHR understanding, and that in the EU somewhat differ. Namely, the EU Directive on the approximation of the laws of the Member States relating to the **safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses**, 2001/23/EC (also known as the Acquired Rights Directive), which protects contracts of employment of people working in businesses that are transferred between owners, guaranteeing any employee's contract of employment to be transferred automatically on the same terms as before in the event of a transfer of the undertaking.

7.2. Overview of the measures affecting the right to a pension

In the broadest terms possible, pension can be defined as a 'fixed sum paid regularly to a person, or to a person's beneficiaries'²⁶⁸. However, more narrowly, pension is a fixed sum paid regularly to a person who is not participating in the labour market. The most usual grounds for pension entitlement are old-age and disability, even though the status of a family member can also be grounds for a pension²⁶⁹. Understood as a retirement income, pensions can come from 'one of the four key pillars of support in old age: unfunded state pensions, i.e. transfers from the current working population via the tax system, and funded private pensions, i.e. from savings accumulated in private sector pension schemes, direct private savings, and post-retirement work. For most people in developed countries, the key sources of retirement income are State and private pension schemes'²⁷⁰.

The present study focuses on, but is not limited to, interventions regarding State pension systems.

State pensions can be granted as an earned right for employees contributing to the State pension scheme, or a social benefit for persons who do not qualify for the pension as an earned right. Thus, for example, in Greece, there is a guaranteed basic pension, ensured by the State²⁷¹, which is not linked to insurance contributions, and is also attributed to uninsured persons over the age of 65 who meet certain eligibility criteria. Furthermore, additional or supplementary pensions can be negotiated to supplement the compulsory pension scheme, usually through private pension schemes.

Similar to other rights, notably the right to healthcare, pensions were also an area long overdue for reform, before, and unrelated to the crisis. The adequacy of pensions, and in particular the extent to which pension systems enable workers to preserve their previous standard of living when moving from employment to retirement, was in the spotlight of the EU long before the crisis, but the crisis put a sharp focus on pension systems²⁷². An ageing population presents a major challenge to pension systems in all Member States, unless women and men, as they live longer, also stay longer in employment and save more for their retirement. Otherwise, the adequacy of pensions cannot be guaranteed, since the required increase in expenditure would be unsustainable²⁷³. Hence, for example, over the last ten years, the number of contributory pensions to the Spanish social security system has increased by more than one million, while the monthly expenditures for pensions rose by around 80%. At the same time, the worker-to-pensioner ratio fell – due to the gradual ageing of the population, but was additionally affected by the recession and economic crisis. Spain is currently spending around 10% of its GDP on public pensions²⁷⁴, i.e. an

²⁶⁸ *Black's Law Dictionary*, Eighth edition, 2nd reprint 2007.

²⁶⁹ Thus, for example, supported family members may be entitled to a pension, as a matter of life insurance (e.g. minor children or the surviving spouse).

²⁷⁰ Blake D., 'Does it matter what type of pension scheme you have?', *The Economic Journal* 110, February 2000, available at: <http://www.pensions-institute.org/workingpapers/wp199905.pdf>.

²⁷¹ Petmesidou M., 'Country Document 2013 – Pensions, health and long-term care – Greece', November 2013, Analytical Support on the Socio-Economic Impacts of Social Protection Reforms, p.5, available at: http://socialprotection.eu/files_db/1443/EL_asisp_CD13.pdf.

²⁷² European Commission – Employment, Social Affairs & Inclusion, 'The financial crisis has put a sharper focus on pension systems', April 2009, available at: <http://ec.europa.eu/social/main.jsp?catId=89&langId=en&newsId=486&furtherNews=yes>.

²⁷³ European Commission, 'White Paper – An Agenda for Adequate, Safe and Sustainable Pensions', COM(2012) 55 final, February 2012, available at: <http://ec.europa.eu/social/BlobServlet?docId=7341&langId=en>.

²⁷⁴ Thus, in April 2014, 7.965,62 million euros were paid, which is an increase of 3.3% from 2013. EFE, 'Pensions expenditure totalled EUR 7.966 million in April, 3.3% increase (*El gasto en pensiones alcanza los 7.966 millones en abril, el 3,3% más*)', *El País* online edition, April 2014, available at: http://economia.elpais.com/economia/2014/04/24/agencias/1398323947_221945.html.

increase of 0.7% in comparison with 2009²⁷⁵. Moreover, the pension spending trend was to increase to 14% GDP in Spain by 2050²⁷⁶. Similarly, in Portugal, public expenditure on old-age pensions has increased consistently over the last decade, from 7% of GDP in 2000 to 10% in 2010. However, the large part of this increase occurred well before the financial crisis of 2008²⁷⁷. Given this outlook, the need for new measures guaranteeing the sustainability of the pension system needed to be discussed, regardless of the crisis.

Therefore, the crisis is not the only, or even the principal, trigger for reforms to pension systems. In any case, it was certainly seen as a window of opportunity and used as an excuse for putting pressure on social partners and accelerating upcoming reforms²⁷⁸, or even adopting reforms without consulting the social partners at all²⁷⁹.

Nevertheless, the impact of the crisis on pensions should not be underestimated, as it has affected pension schemes in Europe in three major ways:

'Firstly, these schemes have served as one form of 'automatic stabiliser' – in other words, as a means of mitigating the potential social consequences of the negative state of the economy – and their use to this end is expected to increase social expenditure in many EU countries. Secondly, the worsening economic situation has entailed new challenges to the financial sustainability of social protection: growing unemployment and negative GDP growth represent a loss in revenues for welfare programmes and may thus lead to the deterioration of public budgets. Thirdly, the financial shock has dealt a severe blow to both private fully-funded schemes and public reserve funds²⁸⁰.

The crisis has opened up the policy debate on key issues such as: the need for countercyclical funding and solvency rules; the trade-offs implied in market-based valuation rules; the need to protect contributors towards retirement from excessive market volatility; the need to strengthen group supervision for large complex financial institutions including insurance and pensions; the need to revisit the resolution and crisis management framework for insurance and pensions²⁸¹.

Against this background, the measures described below could be identified as interfering with pensions in the observed Member States.

²⁷⁵ OECD, Pensions at a Glance 2013. OECD and G20 Indicators: Spain, 2013, available at: <http://www.oecd.org/spain/OECD-PensionsAtAGlance-2013-Highlights-Spain.pdf>. See also OECD, Social spending: pension spending, <http://data.oecd.org/socialexp/pension-spending.htm>.

²⁷⁶ European Commission, 'The 2012 Ageing Report: Economic and budgetary projections for the EU27 Member States (2010-2060)', 2012, p. 406, available at: http://ec.europa.eu/economy_finance/publications/european_economy/2012/pdf/ee-2012-2_en.pdf.

²⁷⁷ ILO, 'Facing the employment crisis in Portugal Report' (*Enfrentar a crise do emprego em Portugal*), November 2013, p. 30, available at: http://www.ilo.org/public/portugue/region/eurpro/lisbon/pdf/versaofinal_oit_relat_enfrentarcriseemprego_20131101_pt.pdf.

²⁷⁸ Stakeholder interview, ETUI, December 2014.

²⁷⁹ Thus, for example in Cyprus the trade unions complained about the fact that prior to the introduction of the reforms, their efforts to start a discussion with the Government had been ignored, whilst the scheme was introduced without consultation with the social partners. Consultation with the Secretary General of the pensioners' trade union EKYSY, September 2014. Similar issues were recorded in Italy too.

²⁸⁰ Natali D., 'Pensions after the financial and economic crisis: a comparative analysis of recent reforms in Europe', Working paper 2011.07, ETUI 2011, p. 5, available at: <http://www.etui.org/content/download/5206/51958/file/11+WP+2011+07+WEB.pdf>.

²⁸¹ Impavido G. and Tower I., 'How the Financial Crisis Affects Pensions and Insurance and Why the Impacts Matter', IMF Working Paper, WP/09/151, 2009, available at: <https://www.imf.org/external/pubs/ft/wp/2009/wp09151.pdf>.

7.2.1. Systemic changes

In Greece and Ireland, **new pension systems** were developed. The reform, in Greece, shifted from a greatly fragmented social insurance system, to a unified, multi-tier system that distinguishes between basic non-contributory and contributory pensions²⁸². In Ireland, a new single pension scheme was introduced for all new entrants to the public service after 1 January 2013.

However, in Portugal, a reform was introduced in 2006, leaving the system rather fragmented with parallel sets of rules applicable to entrants into the system before and after the reform.

7.2.2. Age and seniority for retirement²⁸³

Given the concerns expressed in the introduction to this section, the age for retirement was one of the critical areas in which reforms were called for. In all of the observed Member States, reforms were introduced towards revision of the retirement age. However, whereas in Belgium, Greece, Spain, Italy, Ireland and Portugal, the measures immediately **increased retirement age for pensions** (for some categories of workers), in Cyprus, an automatic adjustment of the statutory retirement age was introduced – to be adjusted every five years in line with changes in life-expectancy at the statutory retirement age. These adjustments are, however, to be applied for the first time only in 2018²⁸⁴.

In the remaining observed Member States, changes were introduced in relation to the admission age for all of the various existing forms of old-age retirement, whether full, early or partial retirement, voluntary, or compulsory retirement.

Most of the reforms are intended to be **applied gradually** over a certain period of time. For example, in Spain, the increase in retirement age is to be gradually implemented over a period of 15 years (until 2027), while in Belgium, the required seniority for early retirement for women, for example, will be increased from 35 to 40 years between 2012 and 2017.

Similarly, in Ireland, qualification for State pension **will be further increased** from 66 to 67 years of age in 2017, with the next scheduled increase to 68 years of age in 2028. Similarly, the next increase in the retirement age in Italy is planned for 2021, when it will increase from 66 to 67 years of age.

Full retirement age was increased to 66 years of age in Ireland, Italy and Portugal. In Spain and Greece, it was increased to 67 years of age. In Belgium and Greece, the

²⁸² Petmesidou M., 'Annual National Report 2011 – Pensions, Health Care and Long-term Care – Greece', May 2011, p.7, available at: http://socialprotection.eu/files_db/1224/asisp_ANR12_Greece.pdf. The new system entered into force as of 1 January 2015.

²⁸³ Several terminological clarifications: Full retirement is normally such retirement when a person was employed for a certain (minimum or maximum) time (number of years or a number of days of employment), and has turned a certain (minimum or maximum) age. Thus, for example, in Cyprus full retirement can be claimed at the minimum age of 65, with a minimum 5 years of employment. Early retirement is pension granted before these minimum requirements are met, again requiring a certain minimum age and duration of contributions to the system. Partial retirement is granted to persons (of a certain age) who want to continue working part-time, and receiving pension for the proportion of time no longer worked. Statutory or mandatory retirement age is the retirement age determined usually for public sector workers, and is the age after which the person has to retire. Seniority is the requirement of a certain period of time spent at work (and contributing to the pension insurance scheme) in order to qualify for (a certain level of) benefits.

²⁸⁴ European Commission, 'The European Economic Adjustment Programme for Cyprus', May 2013, §55, available at: http://ec.europa.eu/economy_finance/publications/occasional_paper/2013/pdf/ocp149_en.pdf.

retirement age for women was increased from 60 to 65 years of age, to equalise with that for men²⁸⁵. At the same time, the requirement of seniority was also increased. In Belgium, the full retirement age remains set at 65 years of age, although retirement at the full pension age in Belgium is the exception rather than the rule²⁸⁶. It is not surprising then to note that most of the measures in Belgium were directed towards reducing different forms of early retirement. In Ireland, the **maximum retirement age** has been set at 70 years of age, while a limit of 40 years has been set on the total service which can be counted towards a pension where a person has been a member of more than one existing public service pension scheme.

Spain differentiates between **forced early retirement and voluntary early retirement**. In both cases, the minimum age will be progressively increased. In the former case it will increase from 61 to 63 years of age, and in the latter from 63 to 65 years of age. Seniority for both types of early retirement is also increased to 35 years for voluntary retirement and 33 years for forced early retirement. Belgium and Greece have increased the **admission age for early retirement** from 58 to 60 years of age and from 60 to 62 years of age, respectively. Portugal **suspended** early retirement during the crisis and, in Greece, early reduced pensions will be **abolished** in 2017.

Additionally, measures were introduced to further discourage early retirement. Thus, in Belgium, early exits via **early statutory retirement**²⁸⁷ were rendered increasingly difficult, while employers' social security contributions for the employers' bonus will increase for lower exit ages. In Italy, where early retirement can be obtained, regardless of age, with little over 42 years of contribution for men and 41 years of contribution for women, early retirements are also being rendered less attractive. Hence, workers who decide to benefit from early retirement pension before 62 years of age will have the **amount of their pension reduced** by 1% for each of the two years before 62, and by 2% for each year before 60.

Belgium and Spain increased the age of eligibility for **partial retirement**. Spain also increased the contribution period. In Belgium, the age for partial retirement was raised to 55 from 50 years of age, with exceptions provided for some harsh occupations and for people having worked effectively for 28 years at the age of 50. In Spain, the maximum reduction of working hours, by means of partial retirement, is limited to 50% – exceptionally 75% if a contract with a replacement younger worker has been secured by the employer.

In Belgium the **preferential career systems** for judges, priests and university professors were amended.

A new set of eligibility criteria for pensioners' **social solidarity allowance** was introduced in Greece, e.g. the maximum total net annual income from pensions to justify granting this benefit increased, the requirement for the beneficiaries to be permanent residents in Greek territory was introduced, while the minimum age limit for receiving the benefit was raised from 60 to 65 years of age. The social solidarity allowance was planned to be abolished

²⁸⁵ OECD, 'Economic Policy Reforms: Going for Growth 2012, Country notes – Belgium', 2012, available at: <http://www.oecd.org/belgium/49655762.pdf>.

²⁸⁶ Belgium records the second lowest effective age of labour market exit in the OECD: 59.6 for men and 58.7 for women relative to 64.2 and 63.6 on average in the OECD. OECD, 'Pensions at a glance 2013 – OECD and G20 indicators; Country highlights: Belgium', undated, available at: <http://www.oecd.org/belgium/OECD-PensionsAtAGlance-2013-Highlights-Belgium.pdf>.

²⁸⁷ Statutory, or mandatory, early retirement (pré-pension) is provided to workers of a certain age and of certain seniority, who are provided with benefits that are cofinanced by the employer and the State benefits system.

from 2015 onwards, but the competent Ministry reassured that it would be maintained at least until 2016, despite differing opinions of the Troika²⁸⁸.

7.2.3. Calculation and revaluation of pensions

The calculation of the amount of pension depends on a number of factors. One important factor for its determination is defining the **period used as the basis for calculation** of the pension. Spain extended this period from the final 15 years of employment to the final 25 years, while in the public sector in Belgium, it has been increased from the last 5 years to the last 10 years of employment. In Ireland, the calculation base was changed from the last salary to the average salary throughout the career.

Furthermore, in Belgium, the only period fully taken into consideration for the calculation, is the income in the years worked after the age of 60, with some exceptions for other periods of work. Nonetheless, the **career unity principle**²⁸⁹ has been relaxed in order to ensure that all of the days worked are effectively taken into consideration in calculating the pension. The calculation is now based on the number of **full-time equivalent days** instead of the number of calendar years.

In Portugal and Spain the sustainability factor, which foresees revaluation of the amount of pension depending on a factor which reflects the relationship between contributors and pensioners, was introduced to connect the amount of pension to life expectancy, and determining an additional cut in the new pensions²⁹⁰.

In Spain, a **pension system revaluation index** was introduced to be applied to **all existing and new pensions**. The index is calculated on an annual basis, which will depend on four variables: income; expenses of the social security system; annual variation index of the number of contributive pensions, i.e. the proportion between the number of contributors and the number of pensioners; year-to-year variations of the system's average pension. Furthermore, pensions will no longer be automatically revaluated according to the annual inflation rate. In disregard of the four variables already mentioned, pensions will increase on a yearly basis by at least 0.25%, but not more than 0.5%. Finally, the revaluation factor will be revised **every five years** in order to recalculate pensions according to that period.

7.2.4. Cuts in pensions and other benefits

In addition to the abovementioned measures affecting the determination of pensions for the newly retired, Greece, Ireland and Portugal imposed various forms of **social solidarity contribution schemes** affecting already-granted pensions.

²⁸⁸ 'Kathimerini' newspaper, 'End of era for EKAS that will be abolished in 2016 under Troika pressure (*Τέλος εποχής για το ΕΚΑΣ, που καταργείται το 2016 υπό την πίεση της τρόικας*)', September 2014, available at: <http://www.kathimerini.gr/783799/article/oikonomia/ellhnikh-oikonomia/telos-epoxhs-gia-to-ekas-poy-katargeitai-to-2016-y-po-thn-piesh-ths-troikas>.

²⁸⁹ The unity of career principle implies that for the calculation of the pension, the career may not be longer than 45 years. In case of a longer career, the least advantageous years are not taken into account. As of 1 January 2015, the unity of career will no longer be 45 years but 14,040 full-time equivalent days (45x 312 days).

²⁹⁰ For a broader technical discussion on sustainability factor, see e.g. Bosch-Princep M., Vilalta de Miguel D., Morillo-Lopez I. and Roch Casellas O., 'The Application of a Sustainability Factor in Spain's Social Security System', undated, available at: http://www.actuaries.org/lyon2013/papers/PBSS_BoschPrinceps_VilaltadeMiguel_LopezMorill_RochCasellas.pdf.

In Greece, the contribution was imposed on both **private and public sector pensions**, and was determined on a sliding scale between 3% and 10%, which later increased to between 6% and 10%. This contribution was initially imposed on principal pensions, but was later extended to supplementary pensions. In Portugal, a 10-50% contribution was **gradually introduced on what was considered 'high' pensions**. In 2013, however, the contribution was thoroughly revised and a much greater number of pensioners were affected by reductions between 3.5% and 40%.

Additional cuts were imposed in Greece on pension lump-sums paid from specific pension funds. Furthermore, additional reductions **between 20% and 40%** (depending on the amount of pension and the age of the pensioner) for **principal pensions** that exceeded a certain amount, were introduced on the amount exceeding a certain threshold amount of pension. **Supplementary pensions** were also subject to a **reduction** on a sliding scale **between 10% and 20%** – depending on the total amount of the supplementary pension.

In Ireland, a 7% **levy on pensions** was collected in 2009. Later on, public sector pensions were cut on average by 4% – private sector pensions are protected from cuts by the Pensions Act 1990²⁹¹. Depending on the amount of pension, the cuts ranged up to 12%²⁹². In 2011, a temporary 0.6% levy on **private pension funds** was introduced as another emergency measure. The Kenny Government announced that the levy would only apply for four years, i.e. 2011-2014. It was increased to 0.75% in 2014, despite the promises that it would not be applied after 2014. A further levy of 0.15% will be applied in 2015²⁹³.

In Greece, Spain and Portugal, the special bonuses for pensioners were affected. In Greece, the **Easter, summer and Christmas bonuses** were originally replaced by a flat bonus, only to be fully abolished in 2013. In Portugal, extra holiday and Christmas pay in 2012, and 90% of the holiday pay in 2013, were abolished²⁹⁴. Spain withdrew the **consumer price index compensation** and Cyprus abolished **free transport and the Easter bonus** for pensioners.

All but the minimum social security **pensions were frozen** in Portugal between 2012 and 2014. **Tax relief on private pension funds** was reduced in Ireland.

7.2.5. Work after retirement

In Belgium, people who are over the age of 65 and have worked for more than 42 years are allowed to work and earn as much as they want after retirement **without losing any State pension rights**. For others, the rules have been slightly relaxed and the amount they can earn without being taxed has been raised. However, it is still not possible to acquire extra pension rights by working after retirement age.

²⁹¹ Euracs, 'Republic of Ireland Pension Summary', 2014, available at: <http://euracs.eu/summaries/summary-ireland/>.

²⁹² Euracs, 'Republic of Ireland Pension Summary', 2014, available at: <http://euracs.eu/summaries/summary-ireland/>.

²⁹³ Irish Pensions Ombudsman, 'Annual Report 2013', April 2014, available at: http://www.pensionsombudsman.ie/cms/sites/default/files/2971%20Pensions%20Ombudsman%20AR13%20inside_0.pdf.

²⁹⁴ As was the case for public employees, these measures were declared unconstitutional by the Portuguese Constitutional Court, but were effectively applied in 2012 due to the limitation of effects of the Court's sentence.

In Cyprus, an attempt was made towards abolishing **multiple pensions for State officials** who take up a second post following their retirement. However, this measure was declared as unconstitutional by the Supreme Court of Cyprus²⁹⁵.

In Spain, those workers who have contributed for many years and achieved the statutory retirement age, are allowed to combine a full-time or part-time job with the receipt of 50% of their pension and enjoy limited social contribution obligations.

Ireland introduced abatement in relation to retiree public service pensions, should the retirees **re-enter public service employment** in the future, even where the new employment is in a different area of the public service.

7.2.6. Vulnerable groups

Pensioners themselves may largely be considered as a vulnerable group of the population per se, given the fact that the right to pension is obtained only at a certain advanced age, and is, by definition, followed by a significant decrease in income. In fact, in crisis-stricken countries, an increased proportion of pensioners are at **risk of poverty**. So, for example in Portugal, it is estimated that in 2011, 19.2% of Portuguese pensioners, aged 65 years or more, were at risk of poverty – which is well above the 14.7% EU-27 average²⁹⁶. Currently, 1.5 million retired citizens have pensions and annuities below EUR 500²⁹⁷.

In Cyprus, a new scheme for securing the guaranteed minimum income, including **minimum pensions**, and aimed at replacing income from social welfare, entered into force in July 2014. According to the scheme, the minimum amount of pension was reduced in July 2014, while at the same, introducing rule changes and requiring **reapplication for the benefit**.

Extra conditions for retirement for the **parents of children with disabilities** were introduced in Greece, retroactively applying to pension requests already pending at the time of its publication.

7.3. Measures taken in alleviation of austerity measures affecting the right to a pension

To complement the measures introduced to restrict access to early retirement, additional measures were put in place in Belgium to **encourage workers to stay longer in the workforce**. Previously, any months worked in the year in which a worker retires did not provide entitlement to a pension. However, following the reforms, these last months will be taken into consideration in the pension calculation – the objective is to encourage the elderly to continue to work beyond the 1 January of the retirement year. Furthermore, the

²⁹⁵ European Labour Law Network, 'The Supreme Court finds the Law suspending double pensions unconstitutional', October 2014, available at: http://www.labourlawnetwork.eu/national_labour_law/national_court_rulings/court_decisions/prm/64/v_detail/id_4894/category_7/index.html.

²⁹⁶ ILO, 'Facing the employment crisis in Portugal Report (*Enfrentar a crise do emprego em Portugal*)', November 2013, available at: http://www.ilo.org/public/portugue/region/europro/lisbon/pdf/versaofinal_oit_relaf_enfrentarcriseemprego_20131101_pt.pdf.

²⁹⁷ Economic and Social Council, Portugal, 'Opinion on the consequences of the economic, social and organisational initiative arising from aging (*Parecer de iniciativa sobre as consequências económicas, sociais e organizacionais decorrentes do envelhecimento da população*)', 2013, p. 7, available at: http://www.ces.pt/download/1359/FINAL_completa%20com%20ESTUDO.pdf.

reform of the pension bonus for private sector workers, attributed to those who keep on working after the age of 62, and the age top-up scheme for civil servants, aim to encourage people to stay at work longer while harmonising the arrangements for all schemes. The pension bonus, taking the form of a pension top-up, is increased the longer the retirement date is deferred. The bonus has, so far, been provided on a flat-rate basis, and an entitlement to the bonus may be granted no earlier than one year after early retirement pension qualification requirements have been met.

There was no compulsory pension scheme available to employees in the private sector in Ireland, apart from the social security benefits. An **obligation for private sector employers** to make pension insurance arrangements for their employees is now being introduced.

In addition, in Ireland, an individual who has pension rights in excess of the new lower standard fund threshold limit of EUR 2 million can claim a **personal fund threshold** from the Revenue to protect the value of those rights on that date.

Despite the massive cuts in pensions in Greece, specific vulnerable groups, e.g. **people with disabilities**, were exempted from the effects of these restrictions²⁹⁸.

In most of the observed Member States, **more favourable conditions apply** in relation to **workers engaged in specific and difficult fields**. Thus, in Italy, workers in 'arduous work', i.e. work which demands 'particularly intensive and continuous mental or physical effort, caused by factors that cannot be prevented by taking appropriate measures', enjoy preferential treatment for retirement. Similarly, in Cyprus, miners can retire earlier and under more beneficial rules, while in Belgium, special protection is granted to workers with demanding work, e.g. night shifts, split shifts or successive shifts. Although, Spanish legislation does not specifically protect arduous work, it does refer to this aspect in its regulation of working hours and regarding early retirement – the amount of pension and the reduction coefficients are established²⁹⁹.

7.4. Impacts of the measures affecting the right to a pension

7.4.1. Pension expenditure

The decrease in pension expenditure is being achieved by two parallel consequences of the reforms: the number of new pensioners is decreasing – with more restrictive conditions for retirement, while at the same time, direct costs are also decreasing because of the cuts in pensions.

In Belgium, the reform of the rules governing the early retirement scheme had a deep impact on the number of people entitled to different pension schemes. With respect to early retirement, **the number of new entrants decreased** by 3.3% between 2011 and 2013. Thus, the general scheme for workers aged 58 and over with a career of 35 years (women) and 38 years (men) – for which the seniority requirement for men was increased up to 40

²⁹⁸ Stakeholder interview, Academic, December 2014.

²⁹⁹ For in depth understanding of arduous work and more detailed information on the situation in Belgium, Italy and Spain, see ETUC et al., 'Better Understanding of "Arduous Occupations" within the European Pension Debate', July 2014, available at: <http://www.etf-europe.org/files/extranet/-75/44210/Arduous%20work%20European%20Desk%20Research%20EN.pdf>.

years, has been especially hard-hit by this decrease, i.e. the number of entrants decreased from 5,305 persons in 2011 to 4,862 in 2013 (- 8.4%).

In Ireland, approximately 55% of the workforce has made some pension provision for their retirement outside the main State scheme. These schemes have come under increasing pressure since the economic crisis and the fall in annuity rates³⁰⁰.

In Cyprus, the new scheme for the minimum guaranteed income was expected to receive at least 70,000 applications. Nonetheless, applications barely exceeded 63,000 **whilst 30% of low-income pensioners did not apply by the deadline** and, therefore, ceased to be eligible either for the minimum guaranteed income or for the social pension³⁰¹.

In Greece, the main pensions were reduced by 3-24%, while supplementary pensions were reduced by 3-10%. It should be noted that, the pension cuts were implemented on pensions above EUR 1,000 and that, approximately, 67.5% of pensioners with pensions of EUR 1,000 and below³⁰², were not subject to these reductions³⁰³. Pensioners receiving medium and high pensions, i.e. between EUR 1,500 and EUR 2,500, were the ones most affected by the cuts³⁰⁴.

The total spending on State pensions in Ireland **has continued to increase** even in the context of the structural reforms and fiscal pressures. The full personal rate of both old age State pensions, i.e. the contributory pensions based on social insurance contributions paid or credited and non-contributory pensions based on a means test, have been raised in the period since 2007, by EUR 37 per week³⁰⁵. In Spain, too, an increase in pension was recorded, but only by 0.25%³⁰⁶. Nevertheless, despite the nominal increase in pensions in Ireland, the Government balances have been improved in terms of magnitude as a result of austerity measures³⁰⁷. For example, the public service pension levy has contributed over EUR 900 million per year to improve the fiscal position, while the public system pension reform is raising approximately EUR 125 million per year³⁰⁸. Also, according to the Irish Government, the single pension scheme for all new entrants to the public service will significantly reduce costs to the taxpayers³⁰⁹.

³⁰⁰ M. Walsh B., L. Mitchell P., C. Bandelow N., 'Sustainable Governance Indicators: Ireland Report', 2014, available at: http://www.sgi-network.org/docs/2014/country/SGI2014_Ireland.pdf.

³⁰¹ Stakeholder interview, Secretary General of the Pensioners Trade Union EKYSY, September 2014.

³⁰² Paparrigopoulou – Pechlivanidis P., Thoughts in respect of decisions 3410 and 3663/2014 of the Council of State concerning cuts in main and supplementary pensions (*Σχόλιο στις αποφάσεις του ΣΤΕ 3410 και 3663/2014 για τις περικοπές των κύριων και επικουρικών συντάξεων*), undated, available at: <https://www.academia.edu/9767436/%CE%A3%CF%87%CF%8C%CE%BB%CE%B9%CE%BF%CF%83%CF%84%CE%B9%CF%82%CE%B1%CF%80%CE%BF%CF%86%CE%AC%CF%83%CE%B5%CE%B9%CF%82%CF%84%CE%BF%CF%85%CE%A3%CF%84%CE%95%3410%CE%BA%CE%B1%CE%B9%3663%2014%CE%B3%CE%B9%CE%B1%CF%84%CE%B9%CF%82%CF%80%CE%B5%CF%81%CE%B9%CE%BA%CE%BF%CF%80%CE%AD%CF%82%CF%84%CF%89%CE%BD%CE%BA%CF%8D%CF%81%CE%B9%CF%89%CE%BD%CE%BA%CE%B1%CE%B9%CE%B5%CF%80%CE%B9%CE%BA%CE%BF%CF%85%CF%81%CE%B9%CE%BA%CF%8E%CE%BD%CF%83%CF%85%CE%BD%CF%84%CE%AC%CE%BE%CE%B5%CF%89%CE%BD>.

³⁰³ Stakeholder interview, Academic, December 2014.

³⁰⁴ Stakeholder interview, Academic, December 2014.

³⁰⁵ Stakeholder interview, Assistant Principal Officer, Department of Social Protection, September 2014.

³⁰⁶ Gómez, M., 'The pensioners are already in the thousands (*Los jubilados ya son mileuristas*)', El País, online edition, 2014, available at: http://economia.elpais.com/economia/2014/06/26/actualidad/1403769048_223950.html.

³⁰⁷ Stakeholder interview, Department of Public Expenditure and Reform, September 2014.

³⁰⁸ Minister for Public Expenditure and Reform, 'Financial Emergency Measures in the Public Interest Act 2013 (No.18 of 2013): Annual review and report to the Houses of the Oireachtas by the Minister for Public Expenditure and Reform under section 12 of the Act', June 2014, available at: http://opac.oireachtas.ie/AWDData/Library3/PERDocLaid30062014_161037.pdf.

³⁰⁹ Euracs, 'Republic of Ireland Pension Summary', 2014, available at: <http://euracs.eu/summaries/summary-ireland/>.

At the same time, a **long-term decrease of spending on pensions** is predicted in Belgium, Spain and Portugal. A decrease in the cost of pension expenditure of 0.6% by 2020, and 2% by 2060, was predicted in Belgium³¹⁰. In Portugal, the projection is that the **substitution rate**, i.e. the amount of pension compared to the amount of the salary earned before retirement – as a percentage, will decrease the most between 2008 and 2048, largely due to the application of sustainability factors established by law³¹¹. In Spain, savings are expected in the amount of 3.4% of the GDP in 2050, in comparison with a scenario with no reforms³¹².

7.4.2. Life standard of pensioners

Despite recorded increases in pensions, according to the Spanish budgetary projections for 2015, pensioners have already **lost purchasing power** of 0.35% in 2014. This trend is expected to continue, given that pensions will not be increased by more than 0.25% until 2019 while an increase in inflation is projected³¹³. A number of weaknesses in the **minimum guaranteed income** scheme were identified in Cyprus, including the **inadequacy** of the amount determined as the ceiling of the minimum guaranteed income to ensure dignified living – with an estimate that pensioners are now 30% worse off than they were two years ago³¹⁴.

In relation to austerity measures on pensions in Greece, the **UN Independent Expert** on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, Cephias Lumina³¹⁵ and **the ECSR**³¹⁶ ascertained that their cumulative effect was bound to bring a significant degradation of the standard of living and the living conditions of many of the pensioners concerned. The legitimate expectation of pensioners that adjustments to

³¹⁰ Belgian Committee on Ageing, '2013 Annual Report (*Rapport annuel 2013*)', July 2013, available at: http://www.plan.be/publications/publication_det.php?lang=nl&KeyPub=1237&TM=63&IS=63.

³¹¹ Economic and Social Council, Portugal, Opinion on the consequences of the economic, social and organisational initiative arising from aging (*Parecer de iniciativa sobre as consequências económicas, sociais e organizacionais decorrentes do envelhecimento da população*), 2013, available at: http://www.ces.pt/download/1359/FINAL_completa%20com%20ESTUDO.pdf.

³¹² El País, 'The Bank of Spain encourages savings from the possible reduction of the pension (*El Banco de España pide fomentar el ahorro ante la posible rebaja de la pensión*)', 2014, available at: http://economia.elpais.com/economia/2014/07/23/actualidad/1406113831_633406.html.

³¹³ Gómez, M., 'Pensions lose on the purchasing power in the first year of reform (*Las pensiones perderán poder adquisitivo en el primer año de la reforma*)', El País, online edition, 2014, available at: http://economia.elpais.com/economia/2014/09/30/actualidad/1412068899_230678.html.

³¹⁴ The factors influencing the general standard were seen to be: the rise in taxes irrespective of income (e.g. sharp increases in VAT), the increase in the price of fuel, the new health charges introduced even for low-income pensioners, the abolition of free transport for pensioners, the abolition of the 'Easter grant' paid to pensioners by the previous Government and the introduction of a new property tax even for the homes of low-income pensioners **Stakeholder consultations, Pensioners' trade union, September 2014**.

³¹⁵ UN GA, Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, Cephias Lumina (Addendum) - Mission to Greece (22 - 27 April 2013), UN Doc. A/HRC/25/50/Add.1, §55, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G14/118/82/PDF/G1411882.pdf?OpenElement>.

³¹⁶ ECSR, *Federation of employed pensioners of Greece (IKA-ETAM) v. Greece*, complaint no. 76/2012, decision on the merits of 7 December 2012, available at: http://www.coe.int/T/DGHL/Monitoring/SocialCharter/Complaints/CC76Merits_en.pdf; *Panhellenic Federation of Public Service Pensioners (POPS) v. Greece*, complaint no. 77/2012, decision on the merits of 7 December 2012, available at: http://www.coe.int/T/DGHL/Monitoring/SocialCharter/Complaints/CC77Merits_en.pdf; *Pensioners' Union of the Athens-Piraeus Electric Railways (I.S.A.P.) v. Greece*, complaint no. 78/2012, decision on the merits of 7 December 2012, available at: http://www.coe.int/T/DGHL/Monitoring/SocialCharter/Complaints/CC78Merits_en.pdf; *Panhellenic Federation of pensioners of the Public Electricity Corporation (POSDEI) v. Greece*, complaint no. 79/2012, decision on the merits of 7 December 2012, available at: http://www.coe.int/T/DGHL/Monitoring/SocialCharter/Complaints/CC79Merits_en.pdf; *Pensioners' Union of the Agricultural Bank of Greece (ATE) v. Greece*, complaint no. 80/2012, decision on the merits of 7 December 2012, available at: http://www.coe.int/T/DGHL/Monitoring/SocialCharter/Complaints/CC80Merits_en.pdf.

their social security entitlements would be implemented considering their vulnerability, settled financial outlooks, and their right to adequate social protection and social security, was disregarded.

7.4.3. Long-term impacts

Concerns regarding the long-term impacts of the reform on future pensioners have been raised in several countries. In Spain, Italy and Ireland it has been argued that austerity measures are causing many problems to the pension system including exacerbating catastrophic pension shortfalls, **reducing future credibility of the system**, and undermining public confidence in the security of the financial system.

For example, according to a recent report, a young worker in Ireland, setting aside annually some EUR 2,500 will face a reduction of EUR 1,625 per annum in annual retirement benefits due to levies alone³¹⁷. The Bank of Spain explained that, even though the new measure ensures system sustainability in the long term, to compensate an ageing population, it does not always guarantee that the purchasing power after retirement will **stay the same. In fact, following the Government's estimations, a person retiring in 11 years' time will receive 3% less** than another person having generated the same pension rights but **retiring at this moment. In Italy, it is foreseen that today's young** people might find it necessary to take out a **complementary retirement** pension plan³¹⁸.

7.4.4. Legal certainty

Another impact of austerity measures, adopted in relation to the right to pension, is relevant to the **quality of legislation**. This is particularly visible in Greece where, in the period 2010-2014, a total of 17 alterations of the social security legislation were made and around 40 Circulars were issued. According to the Greek Ombudsman, **the 'malfunction of the social security services continues to burden the citizens' and 'the social security legislation continues to be complex and unclear'. The social security services encounter difficulties in interpreting and implementing relevant provisions – the speed of changes renders their monitoring and understanding difficult, even for experts³¹⁹. In practical terms, the services are not always able to respond to citizens' questions regarding the requirements for retirement or the amount of pension³²⁰. Sometimes, holding a meeting is necessary before responding to a simple citizens' query³²¹. At the same time, there is reasonable anxiety and insecurity amongst citizens and pensioners about their future³²².**

³¹⁷ Dr Gurdgiev C., Irish pensions: a crisis of policy, institutions and savings, November 2013, Press Release, available at: <http://trueeconomics.blogspot.be/2013/11/20112013-irish-pensions-crisis-of.html>.

³¹⁸ Stakeholder interview, Director of the Ministry of Economy and Finance, October 2014.

³¹⁹ Greek Ombudsman, Report 2013 (available in Greek), p. 44, available at: http://www.synigoros.gr/resources/docs/stp_ethsia_2013.pdf

³²⁰ Stakeholder interview, Academic, December 2014. See also Katrougkalos G., Morfakidis Ch., 'Law in books and law in action: The uncertainty in the implementation of social security law after the reform of 2010-2011 (*Law in books and law in action1: Η αβεβαιότητα ζηην εφαρμογή ηοο δικαιοο κοινωνικήο αζθάλιζηο μεθά ηην αζθαλιζηκή μεηαρρύθμιζη ηοο 2010-2011.*)', Social Security Law Review 2011, p.657, available at: http://eekp.gr/wp-content/uploads/2013/09/arxeio15_2.pdf.

³²¹ Paparrigopoulou – Pechlivanidis P., The impact of the "Memoranda interventions" on social security (available in Greek), Social Security Law Review 9/10, 2014, p.492.

³²² Ibid.

In addition, due to those reasons, as well as the increase in the number of applications and the reduction in staff of the competent administrative authorities³²³, significant **restrictions and delays in awarding and granting pensions** have been noted. This prevents citizens from making their basic financial plans³²⁴. Many citizens have filed complaints for the long delays in the administrative procedure for issuing pension decisions, which may result in a delay of over two years in receiving a pension³²⁵.

7.4.5. Vulnerable groups

The UN Special Rapporteur on Extreme Poverty and Human Rights stressed that, increasing the age at which older people qualify for State pensions represents a reduction in social transfers to a sector that is heavily dependent on such payments and, as such, a potential threat to their right to an **adequate standard of living**³²⁶. Yet, in Cyprus, the minimum guaranteed income is now granted under the condition of lawful stay in Cyprus for the period of at least five years. This may turn out to be problematic for the **repatriated Cypriot elderly people** who have no income or pension from elsewhere. Similarly, in Ireland, older workers, particularly those born after 1949, are exposed to the impact of current uncertainties as they have been given relatively little time to prepare for the fact that their State pension rights have been delayed by one year and their public sector pensions may have been reduced³²⁷. The long-term decrease in purchasing power, in Spain, is seen to be particularly relevant for **low-income workers** – in terms of pensioner poverty.

Furthermore, in Ireland, the increase in the number of social insurance contributions to be eligible for State pension has also had a disproportionate effect on **women** who have not reached the required years to be eligible for State pension³²⁸. The primary reason for the inequality in the pension cuts is that women have taken time out of work to bring up children, or were forced out of jobs due to the marriage bar, and during their time at home they did not receive social insurance points³²⁹.

³²³ The problems deriving from lack of human resources in administration persist. In March 2013, in response to subsequent complaints about delays in protocolling and granting pensions, the Greek Treasury informed the Ombudsman that the suspension of hiring had created a grave staff inadequacy problem in all its services. Greek Ombudsman, 'Ombudsman intervention for solving the problem of delays in protocolling and responding of the Pensions Directorate of the Treasury (Παρέμβαση του Συνηγόρου για την επίλυση του προβλήματος της καθυστέρησης πρωτοκόλλησης και της ανταπόκρισης της Διεύθυνσης Συντάξεων του Γενικού Λογιστηρίου του Κράτους στα αιτήματα των πολιτών)', Mediation summary, May 2013, available at: <http://www.synigoros.gr/resources/docs/376890.pdf>.

³²⁴ Greek Ombudsman, Report 2013 (available in Greek), pp. 44-45, available at: http://www.synigoros.gr/resources/docs/stp_ethsia_2013.pdf.

³²⁵ Greek Ombudsman, IKA has committed to speed up the process of granting pensions, after Ombudsman intervention (Το ΙΚΑ δεσμεύτηκε να επιταχύνει τη διαδικασία έκδοσης συντάξεων, μετά την παρέμβαση του Συνηγόρου του Πολίτη), Mediation summary, June 2012, available at: <http://www.synigoros.gr/resources/docs/304553.pdf>.

³²⁶ UN GA, 'Report of the independent expert on the question of human rights and extreme poverty, Magdalena Sepulveda Carmona: Mission to Ireland', UN Doc. A/HRC/17/34/Add.2, May 2011, available at: http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.34.Add.2_en.pdf.

³²⁷ Considine M., 'Pensions', in ASISP 'Country Document 2013: Pensions, health and long-term care', November 2013, available at: http://socialprotection.eu/files_db/1405/IE_asisp_CD13.pdf.

³²⁸ An internal department survey of 5,700 claimants was conducted which highlighted the likelihood that women would be disproportionately affected by the measures introduced in April 2012. The figures showed that in the categories of pensioners where there was a majority (more than 60%) of women there were cuts imposed of between EUR 1,196 per year and EUR 1,497 per year. In contrast, the other two categories, which were made up predominantly of men (only 36% and 16% women), the annual cuts were EUR 977 and EUR 0 respectively. Ryan, C., Women bear brunt of pension changes, Press Release, March 2014, available at: <http://www.irishexaminer.com/ireland/women-bear-brunt-of-pension-changes-262237.html>. Finding verified by Stakeholder interview, academic, Maynooth University, September 2014.

³²⁹ Ryan, C., 'Women bear brunt of pension changes', Press Release, March 2014, available at: <http://www.irishexaminer.com/ireland/women-bear-brunt-of-pension-changes-262237.html>.

The Greek Ombudsman raised concerns about the retroactive effect of the measure affecting **parents of children with disabilities**, as pending applications that did not meet the new, stricter requirements were rejected, while at the same time, the applicants had already terminated their employment³³⁰.

³³⁰ Greek Ombudsman, Retirement of parents with children with disabilities – ‘Sudden change of the legal framework for pending applications (N.3996 / 2011, Article 37) (*Συνταξιοδότηση γονέων αναπήρων τέκνων – Αιφνιδιαστική αλλαγή νομικού πλαισίου για τις εκκρεμείς αιτήσεις (N.3996/2011 άρθρο 37)*)’, November 2011, available at: <http://www.synigoros.gr/resources/porisma--4.pdf>.

8. IMPACT OF AUSTERITY MEASURES ON THE RIGHT OF ACCESS TO JUSTICE

KEY FINDINGS

- Access to justice is not just a right in itself, but is also an enabling and empowering right insofar as it allows individuals to enforce their rights and obtain redress.
- The justice systems of the EU Member States were subject to revision before, and independently of, the crisis. The crisis, however, also influenced the creation of new policies to a significant extent.
- All of the seven observed Member States have made interventions into the right of access to justice.
- The measures introduced across the observed Member States in the field of access to justice mostly concern: reducing the number of courts and judicial staff; introducing rules restricting access to legal aid; adopting procedural rules restricting access to legal remedies; increasing the costs of proceedings.
- The measures taken in alleviation mostly concern the reduction of workloads by: establishing new judicial structures; the reduction of costs of proceedings; promotion of alternative dispute resolution mechanisms; measures aimed at protecting vulnerable groups.
- Impacts of austerity measures on the right of access to justice are not necessarily limited to measures imposed within the justice system, but may also be conditioned by measures introduced in relation to other rights. Those impacts are mostly seen in the increase of court workloads in Greece and Ireland.
- Impacts of measures aimed at the justice system were identified in the following areas: restricted access to a legal remedy; increased obstacles in accessing legal aid; increased costs of proceedings; reduced effectiveness of judicial protection.
- No measures were identified which would have disproportionately affected vulnerable groups.

8.1. The guarantee of access to justice

In order to make any fundamental right a reality, the right needs to be equipped with an enforcement mechanism, and this is what constitutes access to justice. Seen in this light, access to justice is not just a right in itself but also an enabling and empowering right insofar as it allows individuals to enforce their rights and obtain redress and, in that sense, it transforms fundamental rights from theory into practice³³¹.

For a long time, access to justice was not guaranteed by international human rights law as such. It has, however, featured prominently in the general requirements of the respect of rights of individuals. Hence, while guaranteeing procedural rights by means of the right to a fair hearing or trial, the UDHR, the ICCPR and the ECHR, do not make explicit reference to access to justice. This has not prevented the ECtHR from effectively providing protection of

³³¹ FRA, 'Access to justice in Europe: an overview of challenges and opportunities', 2010, available at: http://fra.europa.eu/sites/default/files/fra_uploads/1520-report-access-to-justice_EN.pdf.

the right of access to justice by expanding the guarantee of the right to a fair trial from Article 6 of the ECHR to include a guarantee of the right to access to a court. Furthermore, Article 13 of the ECHR guarantees the right to legal remedy, which is also an important element of access to justice.

Considered as a necessary prerequisite for the enjoyment of all fundamental rights, access to justice has been considered by the CEDAW Committee within the context of respect and protection of human rights - which can only be guaranteed with the availability of domestic effective remedies. Even though the CEDAW, just like the ECHR, does not provide an explicit **guarantee of the right of access to justice, the Committee ascertained that 'legal rights are only meaningful if they can be asserted. Access to justice is therefore also an essential component of rule of law and a means [...] to actively claim the entire range of rights provided'**³³².

Some other instruments, however, have taken to explicitly guaranteeing the right of access to justice. In 1985, the UNGA adopted the Declaration of Basic Principles for Victims of Crime and Abuse of Power, setting out, under the title **'Access to justice and fair treatment'** the entitlement of victims of crime to access mechanisms of justice and to prompt redress³³³. More recently, the Convention on the Rights of Persons with Disabilities³³⁴ guarantees the right of people with disabilities to access to justice on an equal basis with others.

Most importantly, access to justice has been provided for by Article 47 of the EU Charter, which guarantees the right of everyone to an effective remedy before a tribunal established by law, by means of a fair and public hearing within a reasonable time, with access to legal aid, if necessary. However, even though it is seen to typically mean **'having a case heard in a court**, it can more broadly be achieved or supported through mechanisms such as national human rights institutions, equality bodies and ombudsman institutions, as well as European Ombudsman at the EU level³³⁵.

Bearing in mind the above considerations, access to justice should not be limited to access to court³³⁶, and it cannot be limited to only one stage of the proceedings³³⁷. It refers, not only to access to a justice delivered by a court, but to any administrative processes such as immigration review³³⁸ or State compensation funds³³⁹, in which any particular individual

³³² The UN CEDAW Committee, 'Access to Justice: Concept note for general discussion', 2012, available at: <http://www.ohchr.org/Documents/HRBodies/CEDAW/AccessToJustice/ConceptNoteAccessToJustice.pdf>.

³³³ UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Article 4.

³³⁴ CRPD, Article 13.

³³⁵ FRA, 'Themes: Access to justice', available at: <http://fra.europa.eu/en/theme/access-justice>.

³³⁶ Access to court is only a component of the right to a fair trial, which in turn is only a component of the right of access to justice. ECtHR has built a massive body of case-law on the access to a court, which is a category introduced to the ECHR by means of the ECtHR's interpretation of Article 6 of the Convention. Thus, already in 1975, the ECtHR held that the right of access to court constitutes only one aspect of the right to a fair trial. See *Golder v. the United Kingdom*, no. 4451/70, judgment of 21 February 1975, §36, available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57496>.

³³⁷ In this regard, Article 13 of the ECHR guarantees the right to a legal remedy, for example.

³³⁸ Hence, the lack of an independent appeals mechanism for the review of immigration decisions was considered to be standing in the way of ensuring 'access to fair procedures and effective remedies for migrants and their family members seeking to challenge decisions affecting their human rights as protected under the [ECHR]'. See Immigrant Council of Ireland, Independent Law Centre, 'Submission to the CRDAW General Discussion on "Access to Justice"', January 2013, available at: <http://www.ohchr.org/Documents/HRBodies/CEDAW/AccessToJustice/ImmigrantCouncilOfIreland.pdf>.

³³⁹ Hence, for example, the EU Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime ensures that person who have fallen victim of crime receive access to justice, while Directive 2004/80/EC provides for an obligation for state compensation to victims of intentional violent crime.

right or entitlement is being decided upon³⁴⁰. Access to justice depends on the existence of adequate institutions and effective implementation of rules of procedure governing them, ensuring that laws are implemented through a functioning justice chain³⁴¹. Hence, the protection of rights must spread throughout all stages of the process. For instance, in relation to the exercise of the right to a pension, access to justice needs to be already ensured at the stage of preparation of documentation for a request for a pension. It also needs to be present throughout the administrative procedure of awarding the pension, as well as during appeal or court proceedings – in case the decision is not satisfactory. Finally, it needs to exist to ensure the enforcement of the payment of a pension, should it be **requested. What is more, in order to further ensure justice is served, 'court users should have the right to apply to a national court for compensation for the damage he/she has suffered due to a dysfunction of the judicial system**³⁴².

8.2. Overview of the measures interfering with access to justice

'Austerity measures have [...] threatened access to justice by weakening the accessibility and capacity of the judicial system. Between 2008 and 2010, the budgets of judicial systems were reduced together with **general reductions in public expenditure [...]. Court fees have also been increased in some countries as a response to the crisis. In Estonia, for example, state fees for civil and certain administrative law proceedings underwent two- to five-fold increases in 2009. In 2011 and 2012 legal aid was subjected to significant cuts in Germany, Ireland and the United Kingdom, restricting its availability to a more limited number of cases**³⁴³.

The CoE European Commission for the Efficiency of Justice (CEPEJ) has paid particular attention to evaluating the efficiency and quality of justice against the background of the crisis, and has, to that end, made specific inquiries with the CoE Member States. It concluded that many States had already cut their budgets for the judiciary in 2009, either by means of direct cuts in these budgets, or by imposing non-replacement policies³⁴⁴. The CEPEJ also records that, later on, some States reduced the salaries of judges while, in others, austerity measures had a direct impact on judicial training and education³⁴⁵. In some States, budget cuts due to the crisis were also spotted in the budgets of prosecution³⁴⁶. However, not only negative trends have been noted – some States record significant increases in the financing of the judiciary³⁴⁷.

³⁴⁰ Global Alliance Against Traffic in Women, 'The Right to Access to Justice', available at: http://www.gaawt.org/atj/index.php?option=com_content&view=article&id=123:intro&catid=1:Latest%20News.

³⁴¹ UN CEDAW Committee, 'Access to Justice – Concept Note for Half Day General Discussion', 18 February 2013, p. 10, available at: <http://www.ohchr.org/Documents/HRBodies/CEDAW/AccessToJustice/ConceptNoteAccessToJustice.pdf>.

³⁴² CEPEJ European Judicial Systems, Edition 2014 (data 2012): Efficiency and quality of justice, p. 100, available at: http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2014/Rapport_2014_en.pdf.

³⁴³ CoE Commissioner, 'Safeguarding human rights in times of economic crisis', issue paper, December 2013, p. 55, available at: <https://wcd.coe.int/ViewDoc.jsp?id=2130915>.

³⁴⁴ CEPEJ, European Judicial Systems, Edition 2010 (data 2008): Efficiency and quality of justice, pp 46-47, available at: http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2012/Rapport_en.pdf.

³⁴⁵ Like Greece and Andorra for the former or Slovenia for the latter. See CEPEJ European Judicial Systems, Edition 2014 (data 2012): Efficiency and quality of justice, p. 38, available at: http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2014/Rapport_2014_en.pdf.

³⁴⁶ Malta, Lithuania, Slovenia and UK-Scotland. See CEPEJ, European Judicial Systems, Edition 2014 (data 2012): Efficiency and quality of justice, p. 46, available at: http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2014/Rapport_2014_en.pdf.

³⁴⁷ In Latvia, Hungary and Poland, for example. CEPEJ, European Judicial Systems, Edition 2014 (data 2012): Efficiency and quality of justice, p. 46, available at: http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2014/Rapport_2014_en.pdf.

For a few Member States, the figures indicate an increase in the length of proceedings³⁴⁸. The reasons behind this may differ. For example, for countries especially affected by sovereign debt, financial and economic crisis, the increase of incoming cases has had an impact on the functioning of the justice system³⁴⁹.

As noted by the CoE Secretary General '[i]n established democracies, the economic crisis has revealed structural deficiencies in governance that have undermined the proper functioning of democratic institutions. Severe budget cuts and external pressure from international financial institutions have resulted in a considerable weakening of democratic and human rights protection in some Member States. This has affected good governance as well as the administration of justice and public services, leading to the devaluation of trust in institutions³⁵⁰.

Nonetheless, similar to other rights dealt with by the present study, not all of the measures can be attributed exclusively and fully to austerity. In that regard, significant structural problems were identified in Greece and Portugal.

Even before the crisis, a few judicial systems – including the Greek, Italian and Portuguese systems, were facing considerable challenges and demonstrated important inefficiencies. Until 2010, 65% of the total violations found by the ECtHR in cases against Greece related to the right to a fair trial, the majority being due to the excessive length of court proceedings³⁵¹, **indicating a 'structural problem'. It cannot, therefore, be contested that there was significant room for improvement with respect to the efficiency of the Greek judicial system, as the enormous³⁵² delays practically lead to non-attribution of justice.**

Similarly, Italy has been known, for a long time, for its notoriously lengthy proceedings, **which have been seen as a 'persistent structural problem³⁵³'. In fact, a major reform aimed at providing a remedy for excessive length of proceedings, introduced by means of the so-called Pinto Act³⁵⁴, was declared ineffective by the ECtHR on several occasions³⁵⁵.**

³⁴⁸ A constant increase in the length of proceedings from 2006 to 2012 was recorded in Italy and Spain, while in Portugal, there was a descending trend between 2006 and 2010, only for the increase (though quite mild) to be recorded between 2010 and 2012. CEPEJ, European Judicial Systems, Edition 2014 (data 2012): Efficiency and quality of justice, p. 240, available at:

http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2014/Rapport_2014_en.pdf.

³⁴⁹ Hence, for instance, in Greece, the number of incoming civil and commercial cases increased by 42% between 2010 and 2012. European Commission, 'The 2014 EU Justice Scoreboard', p. 15, available at: http://ec.europa.eu/justice/effective-justice/files/justice_scoreboard_2014_en.pdf.

³⁵⁰ Report of the Secretary General of the Council of Europe, 'State of democracy, human rights and the rule of law in Europe', SG(2014)1 – final, May 2014, available at:

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016800c4462>.

³⁵¹ Koutsopoulou K. – Kosma A., 'The gradual inclusion of Greek constitutional protection of individual rights in the provisions of the European Convention on Human Rights through the profile of the 'Greek' decisions of the European Court of Human Rights and their influence in Greece', contribution to the 3rd Common Seminar of Constitutional Law, Volos, 24 March 2011, N.K.U.A. 2011, pp. 257-293.

³⁵² It is mentioned that one of the ECtHR judgments referred to a delay of 27 years. See 'Justification report for Law 4055/2012' (Αιτιολογική έκθεση στο σχέδιο νόμου: „Για τη δίκαιη δίκη και την εύλογη διάρκεια αυτής”), p. 1, available at: http://www.hellenicparliament.gr/Nomothetiko-Ergo/Anazitisi-Nomothetikou-Ergou?law_id=5453eb70-0c94-4928-9446-7d10fb5b4042.

³⁵³ See e.g. CoE, Ministers' Deputies Information documents, *Length of proceedings in Italy – a persistent structural problem*, CM/Inf(2002)47 Addendum, November 2002, available at: <https://wcd.coe.int/ViewDoc.jsp?id=326157&Site=COE>.

³⁵⁴ Law no. 89 of 24 March 2001 on Fair compensation for cases of violation for the reasonable length of trial and amendment to Article 375 of the Civil Procedure Code (*Legge n. 89, 24 marzo 2001, Previsione di equa riparazione in caso di violazione del termine ragionevole del processo e modifica dell'articolo 375 del codice di procedura civile*), published in the Official Gazette no 78 of 3 April 2001.

³⁵⁵ See ECtHR, *Scordino v. Italy*, no. 36813/97, judgment of 29 March 2006, available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-72925>; *Simaldone v. Italy*, no. 22644/03, judgment of 31 March 2009, available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-91968> and *Gaglione*

In Portugal, too, the Administration of Justice has had problems before the crisis, with many complaints from citizens, especially regarding the exaggerated length of judicial procedures. Portugal has repeatedly been condemned by the ECtHR for its failure to deliver justice in time to its citizens³⁵⁶.

In 2011, the IMF asked Ireland to propose reforms to the **organisation of the legal profession** by introducing the Legal Services Regulatory Authority³⁵⁷. Hence, a number of reforms to the Irish justice system have also been carried out using political momentum created by the crisis.

8.2.1. Number of courts and judicial staff

There is hardly a Member State which is not undergoing some sort of reform of judiciary, and not necessarily as a response to crisis³⁵⁸. Hence, a **new judicial map** is being drawn in Portugal, following concerns expressed even before the crisis. Nonetheless, the reform is now being approached from a different angle, bearing in mind the need to save funds³⁵⁹.

In Italy and Portugal, the number of courts was reduced. In 2012, Italy adopted legislation determining the **closure** of 31 tribunals, 31 public attorney offices, 220 local sections of tribunals and 667 (out of 850) offices of justices of the peace³⁶⁰. As part of the Portuguese reform, the number of **judicial districts** was reduced from 200 to 23. Twenty **courts were closed down**, while 27 more were transformed into proximity sections. The previous 200+ judicial districts were concentrated and currently add up to only 23.

The Irish pension reform measures led to increased uncertainty and a tendency for retirement, while, at the same time, restrictions in public sector recruitment affected the staffing of courts³⁶¹, thus causing a reduction in **number of court staff**. As with the rest of the public employees, reductions in wages were imposed on court personnel as well as on the members of the judiciary in all jurisdictions and all instances³⁶².

8.2.2. Legal aid

Legal aid is one of the principal tools enabling effective access to justice. Where there is no legal aid, the most vulnerable groups of the population may simply be left out of the protection, as they usually have neither the necessary legal knowledge nor the funds necessary to engage legal representation, which may then leave them outside of the

and Others v. Italy, no. 45867/07, judgment of 21 December 2010, available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-102517>.

³⁵⁶ Only in 2014 the ECtHR adopted almost a dozen of judgments, finding a violation of Article 6 (right to a fair trial) in respect of Portuguese cases.

³⁵⁷ IMF, 'Statement issued by the IMF staff regarding a press statement made by EU Commissioner for Justice, Viviane Reding on 17 March 2014', March 2014, available at: <https://www.imf.org/external/country/IRL/rr/2014/032414.pdf>.

³⁵⁸ Stakeholder interview, EJTN, December 2014.

³⁵⁹ The Government is, indeed, announcing that the reform will save EUR 1.1 million. See the Government's Report 'State Budget for 2015 (*Orçamento do Estado para 2015*)', p. 150, available at: <http://www.dgo.pt/politicaorcamental/Paginas/OEpagina.aspx?Ano=2015&TipoOE=Proposta%20de%20Or%C3%A7amento%20do%20Estado&TipoDocumentos=Lei%20/%20Mapas%20Lei%20/%20Relat%C3%B3rio>.

³⁶⁰ Lorenzi B. (Altalex), 'Cutting the courts: where the state withdraws, the municipalities and local authorities advances (*Taglio dei tribunali: dove lo Stato arretra, avanzano i comuni e gli enti locali*)', 3 August 2012, available at: <http://www.altalex.com/index.php?idnot=58398>.

³⁶¹ Stakeholder interview, Magistrate Judge, October 2014.

³⁶² Stakeholder interview, Magistrate Judge and Academic, October 2014.

system of protection. Legal aid is specifically guaranteed in criminal matters, even though its provision in other types of proceedings is also protected³⁶³. Normally, in order for legal aid to be granted, certain conditions must be satisfied, most notably regarding the financial situation of the person concerned and the seriousness of the case in which the aid is required. In addition, in some Member States, for example Cyprus, the applicant for legal aid must also prove that the case has a certain likelihood of success, which makes access to legal aid more difficult.

In Belgium and Cyprus, the **budget for legal aid** was reduced. In Belgium, the reduction was approximately 10% between 2012 and 2014³⁶⁴, where a requirement was proposed for trainee lawyers to take on free-of-charge, five pro bono cases as part of their training. At the same time, the principle of **user contribution** was introduced in Greece and is being discussed in Belgium. In Greece, the fees of technical experts have been removed from legal aid coverage, and were moved to the citizens. In Belgium, fixed fees for the appointment of counsel and initiation of first instance and appeal proceedings are being introduced. Moreover, more restrictive conditions for the appointment of legal counsel are being discussed in Belgium, and the amount of time to provide evidence of qualifying for legal aid is being significantly reduced (from a month to five days).

8.2.3. Procedural rules

Particular problems arose in relation to the influx of tax-related cases in Greece. Namely, as will be discussed in section 10, significant interventions were made in the sphere of taxation of citizens, which caused a large increase in the number of complaints against decisions determining tax duty. At the same time, **appeal fees were increased** and limitations to the **judicial review** of those decisions were introduced.

More stringent **admissibility criteria for appeal** were introduced in Greece and Italy. In Greece, the cassation appeal before the Council of State has been made significantly more burdensome³⁶⁵, including a requirement of the absence of pre-existing case-law on the matter. In Italy, two novelties were introduced: stricter formal requirements for appeals³⁶⁶ and the attribution of power to the appeal judge having heard the parties, to declare the **appeal inadmissible where the appeal 'does not have a reasonable probability of being founded'**³⁶⁷.

³⁶³ ECHR, Article 6(3)(c) guarantees the right of everyone to defend themselves 'in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require'. Within the UN system, Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems were adopted in 2013, available at: http://www.unodc.org/documents/justice-and-prison-reform/UN_principles_and_guidelines_on_access_to_legal_aid.pdf. By its ruling in the case of *Ayrey v. Ireland*, the ECtHR extended the application of this principle to civil proceedings. EctHR, *Ayrey v. Ireland*, no. 6289/73, judgment of 9 October 1979, §§26-28, available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57420>. In January 2003, the EU adopted a Directive to improve access to justice in cross-border disputes through minimum common rules on legal aid (2002/8/EC).

³⁶⁴ From EUR 78 million in 2012 to EUR 71.1 million in 2014.

³⁶⁵ Since 2010, an appeal in cassation is allowed before the Council of State only when it is stated upfront by the applicant that there is no case-law on the matter or that his/her case differs to settled case-law and only when the financial value at stake is more than EUR 40,000 for cases other than those dealing with periodic benefits, entitlement to pension or to other lump sum benefits. As for cases regarding public contracts, no appeal is admissible if the financial value is less than EUR 200,000.

³⁶⁶ It became necessary to specifically and expressly identify which parts of the ruling are contested, what error was committed by the judge, and how else the case should be decided. If the appeal does not meet these requirements, it is dismissed as inadmissible.

³⁶⁷ **The judge's decision regarding the admissibility or inadmissibility of the appeal is discretionary, as it cannot be challenged before a higher judge.** If the appeal is declared inadmissible, the appellant may only challenge the first instance decision before the Court of Cassation, but not the decision declaring the appeal inadmissible. However,

The Portuguese judicial reform introduced novelties according to which, citizens will be able to handle their proceedings and make inquiries to the judicial administration, or be heard as witnesses using **videoconferences**. At the same time, it was foreseen that trials will not normally be performed in proximity sections, but at the respective main court.

Greece introduced further restrictions for access to various remedies, including a restriction of the time-limit to submit an appeal before the Court of Auditors and conditions for granting interim measures. In addition, a procedural condition of a fiscal character was introduced in relation to certain real estate disputes, where any action not accompanied by a certificate that the taxes on property had been paid, will be declared inadmissible.

8.2.4. Costs of proceedings

New court fees were introduced in Greece, Italy, Portugal and Spain. Furthermore, in Belgium and Greece, new taxation regulations now impose **VAT on lawyers' fees**, causing an increase in these fees for citizens of 21% and 23%, respectively.

Greece adopted a new Code of Lawyers, which requires a fixed amount to be prepaid by lawyers for each procedural act, submission or court appearance, subject to inadmissibility of the case. Further increases in court fees were introduced. The amounts for **judicial stamp duty** – necessary for every procedural act, submission and court appearance, increased in 2011 by up to 750%³⁶⁸, together with the amounts for judicial duty notes³⁶⁹. Furthermore, the legal aid system now no longer covers the **fees of technical experts**, shifting this cost to citizens.

In Italy and Spain, **previously cost-free proceedings are now subject to a fee**. Spain has imposed new fees on proceedings, such as those on: claims in all kinds of declarative processes; enforcement of extrajudicial actions in the civil jurisdiction; counterclaim formulation; initial requests for payment procedure; the European order for payment; administrative actions; bankruptcy proceedings; incidental demands in insolvency proceedings; extraordinary appeals on procedural infringement in civil law; appeals against judgments; appeals in cassation in civil and administrative courts; appeals and cassation procedures in the social order; opposition to the execution of judicial resolutions. Both Italy and Spain have also introduced fees in labour proceedings. New Spanish legislation provides for the payment of costs by those affected by a foreclosure, while in Italy, welfare cases are now also subject to a fee. These newly-imposed costs may be quite high in Spain, i.e. appealing a decision concerning a dismissal will cost EUR 500 per claimant. In Italy, new costs were imposed on welfare and employment cases.

Furthermore, in Italy and Portugal, the **existing fees were increased**. For example, in Italy, if the dispute concerns the rights of citizenship, residence, entrance and permanence in the territory of the State, the fee for lodging an application with a court is EUR 300, which is 20% higher than in 2008. **Further costs** were also added, i.e. appellants are required to pay the application fee for a second appeal where their first appeal is dismissed

because general rules limit the grounds of appeal to the Court of Cassation to violations of law, the review of the findings of fact remains precluded.

³⁶⁸ So for example, the costs rose from EUR 0.50 to EUR 3 in first instance courts; from EUR 1 to EUR 5 in second instance courts; from EUR 2 to EUR 15 for supreme courts; from EUR 0,50 to EUR 2 for every certified copy.

³⁶⁹ Although these amounts are refundable to the applicant if the outcome of the proceedings is favourable, there is a very strict obligation to pay the relevant sums and submit the notes at a very early stage of the proceedings (and in any case no later than the first hearing), otherwise the application is rejected as inadmissible.

in its entirety or declared inadmissible³⁷⁰. Some additional fees were introduced which effectively make the client pay for the omissions of his/her lawyer³⁷¹. In Portugal, the costs in civil, criminal and administrative proceedings were increased and are now amount up to EUR 1,000 for an appeal in criminal cases, or up to EUR 8,000 for an appeal in civil proceedings.

The parties to a court case before the Italian courts are also required to pay a duty for each copy of the documents in the case dossier, with a measure adopted that, during the crisis, the **duties for paper copies** should be set at a level at least 50% higher than digital copies³⁷².

Portugal adopted a new rule requiring payment of all costs upfront and all at once, abolishing the initial and subsequent fees that previously existed.

8.3. Measures taken in alleviation of austerity measures affecting access to justice

A number of measures have been introduced in order to facilitate access to justice to citizens in Belgium, Cyprus, Greece, Ireland and Spain.

Cyprus and Ireland have introduced measures specifically intended to **reduce the workload of certain court instances**. To alleviate the pressing situation developed as a result of the large volume of pending cases and the backlog of cases awaiting trial, a **new Administrative Court** is to be set up in Cyprus, to try cases of exclusively administrative nature, which are currently tried by the Supreme Court.

The Irish Legal Aid Board is prioritising initiatives to **provide early legal advice** and an integrated family mediation initiative to reduce the demand for litigation in family law cases³⁷³. At the same time, the Irish Government invested EUR 58 million towards establishing the **new family court structure** and the new Superior Court of Appeal to deal with appeals in civil cases, in order to **decrease the overwhelming workload** which was being faced by the Supreme Court³⁷⁴.

Certain measures were introduced in Belgium, Greece, Ireland and Spain towards **reducing the costs** of proceedings. Hence, the development of reforms to the legal profession in Ireland focused on allowing barristers and solicitors to set up one-stop shops with other

³⁷⁰ This measure, which is the annual Stability Law for the year 2013, does not expressly put forward the need to cope with the crisis as part of the rationale of the reform. However, it can be argued that this measure aims at discouraging "excessive" litigation in the hope of improving the overall performance of the justice system. Indeed, research shows that well-performing justice systems support economic growth. . See e.g. Palumbo G. et al., 'Judicial performance and its determinants: a cross-country perspective', OECD, 2013, available at: <http://www.oecd-ilibrary.org/docserver/download/5k44x00md5g8.pdf?expires=1420810569&id=id&accname=guest&checksum=6C107B046D4A95B72D5BC8E4375ADA28>, accessed on 09.01.2015.

³⁷¹ The fee may be increased if the lawyer fails to indicate his e-mail address, fax number or national registration number in the application, while if a submission does not indicate the value of the case, the application is presumed to fall within the highest value bracket.

³⁷² The implementing measures necessary to make the rule operational do not seem to have been adopted yet.

³⁷³ Department of Public Expenditure and Reform, 'Public Service Reform Plan 2014-2016', January 2014, p.48, available at: <http://reformplan.per.gov.ie/downloads/files/Reform%20Plan%202014.pdf>.

³⁷⁴ The journal.ie, 'Referendum will allow radical reform of courts system', July 2012, available at: <http://www.thejournal.ie/referendum-courts-system-reform-court-of-appeal-oath-alan-shatter-524007-Jul2012/>.

services, to help reduce costs for people hiring lawyers³⁷⁵, increasing transparency on legal costs, better protecting consumers of legal services, and creating independent oversight bodies for professional misconduct and disputes over legal costs³⁷⁶. In Greece, the users of legal aid are exempted from paying the fixed fees otherwise required for each procedural act, submission or court appearance mentioned in section 8.2.4 above. Despite the general rule imposing payment of fees in Spain, a 60% reduction of costs was granted in favour of workers and the self-employed, while people receiving legal aid were exempted from fees.

Following an intervention from the Spanish Ombudsman, **further reductions or exemptions from fees** were introduced, reducing fees for administrative proceedings, as well as for certain civil proceedings, including labour and some family-related disputes. Additional exemptions from fees were introduced subsequently, i.e. most notably, the exemption of fees for procedures specially established for the protection of fundamental rights and civil liberties, as well as the appeal against the silence of administration.

People, who try to find a solution to their disputes through the mechanism of **conciliation or mediation** in Belgium, are not being charged an additional contribution in addition to the contribution they pay for the appointment of counsel.

In Greece and Spain, special measures were adopted to protect certain **vulnerable groups** of people by providing them with legal aid. Greek measures were directed towards people subject to foreclosures, while in Spain, additional protection was extended to victims of gender violence, terrorism and human trafficking, minors, and people with mental disabilities.

8.4. Impact of the measures affecting the right of access to justice

Even without excessive delays in the process of justice, overall, the justice system still works slowly. In practice, this means that impacts of measures on the right of access to justice may not yet be visible, given the time it takes for the cycle of justice to take effect³⁷⁷. Therefore, some impacts cannot yet be fully evaluated. However, educated projections have been made with respect to some of the outcomes of measures imposed as a result of the crisis.

³⁷⁵ McEnroe, J., 'Fitzgerald: 'New era of transparency and reform in the justice system'', May 2014, Press Release, available at: <http://www.irishexaminer.com/ireland/fitzgerald-new-era-of-transparency-and-reform-in-the-justice-system-267996.html>.

³⁷⁶ IMF, 'Statement issued by the IMF staff regarding a press statement made by EU Commissioner for Justice, Viviane Reding on 17 March 2014', March 2014, available at: <https://www.imf.org/external/country/IRL/rr/2014/032414.pdf>.

³⁷⁷ According to the case-law of the ECtHR, for a cycle of justice involving three instances, the generally applicable rule for the acceptable length of proceedings is: three years for the first instance decision, two for the second instance and one for the third instance (if available). Hence, the total length of a three instance process should not exceed six years. Given the issues some of the observed Member States (in particular Italy, but also Greece, Spain and Portugal) have had with the length of proceedings, however, it might take even longer to see full effects of the measures imposed.

8.4.1. Access to legal remedy

Greece, Italy, Ireland and Spain have recorded impaired access to some of the available legal remedies, in relation to all, or some, of the proceedings in which justice can be sought.

Access to the **constitutional remedy** before the Greek Council of State has been severely limited by the requirement of the absence of pre-existing relevant case-law, which has created a sort of precedent system on the basis of which the Council of State cannot reverse its own case-law³⁷⁸.

The increased appeals and limitations to the **judicial review of taxation cases**, in Greece, caused serious concerns from the judiciary and lawyers alike, as to the ability of citizens to challenge the legality of acts of the taxation authorities before the courts³⁷⁹.

With regard to access to labour court mechanisms in Ireland, to vindicate **employment rights**, workers and trade unions have to pay a significant fee to bring forward a case and no legal aid is available in such matters. This creates a significant barrier to clients lacking the financial resources to defend their employment rights³⁸⁰.

The Italian National Lawyers' Association warned that, because of the high cost of accessing justice, citizens are **giving-up enforcing their rights** in court³⁸¹. Since the increase in application fees is not accompanied by any increase in the maximum income threshold for qualifying for legal aid in Italy, citizens are being **discouraged from requesting legal remedies**. At the same time, the provision granting judges' discretionary power on appeal has been criticised for causing **legal uncertainty**. The relevant clause is seen as too vague to constitute a criterion for decisions, and that it will be left to the judges themselves to determine which criteria to actually follow³⁸².

In Spain, from 2007 to 2011, the **number of decided cases increased** by 70% in civil courts, and by 100% in labour courts³⁸³. At the same time, the statistics show a decrease in the **number of incoming cases** in almost all jurisdictions affected by the adoption of these measures. That is, in comparison to 2012, there was a 9.2% decrease in 2013 for incoming cases in civil jurisdiction and a 15.5% decrease in cases for administrative

³⁷⁸ Stakeholder interview, Academic.

³⁷⁹ Union of Administrative Judges, Press release (in Greek), October 2014, available at: <http://www.edd.gr/index.php/views/23-news/announcements/141-press-release-20oct>. See also Yannakopoulos C., Public interest in the light of the economic crisis: Reflections on the occasion of Decisions 693/2011, 1620/2011 and 2094/2011 of the Council of State (available in Greek), *Administrative Law Review (Εφημερδα)* 1/2012, p. 102 with further relevant references.

³⁸⁰ Stakeholder interview, academic, Maynooth University, September 2014.

³⁸¹ Associazione Nazionale Forense (ANF), 'According to the the ANF, justice is economic emergency for lawyers: drastic drop in income category not only due to the crisis but also due to the exiting criteria (*Giustizia, per l'ANF è emergenza economica per gli avvocati: calo drastico dei redditi categoria non solo per la crisi ma anche per i parametri vigenti*)', March 2013, available at: <http://www.associazionenazionaleforense.it/2013/03/27/giustizia-per-lanf-e-emergenza-economica-per-gli-avvocati-calo-drastico-dei-redditi-categoria-non-solo-per-la-crisi-ma-anche-per-i-parametri-vigenti/>.

³⁸² Stilo A. (La Nuova Procedura Civile), 'The first court decisions with the appeal filter (*I primi orientamenti giurisprudenziali sul filtro in appello*)', May 2014, available at: http://www.lanuovaproceduracivile.com/wp-content/uploads/2014/05/stilo_filtro_appello_orientamenti_giurisprudenza.pdf.

³⁸³ General Council of the Judiciary, 'The Spanish Judiciary in figures 2011 (*La Justicia dato a dato*)', 2011, available at: http://www.poderjudicial.es/cgpj/es/Temas/Estadistica_Judicial/Analisis_estadistico/ch.La_Justicia_dato_a_dato.defalult.

jurisdiction. However, the total number of incoming cases is approximately the same, considering the minor increase of 1.2% compared to the previous year³⁸⁴.

8.4.2. Legal aid

In Belgium, the newly-introduced measures have led to the reduction of time allocated to lawyers to spend on legal aid cases. Therefore, if a lawyer is to be allocated to a party in the proceedings as a matter of urgency, the party has only five days, in contrast with the previously existing period of one month, to provide evidence of qualifying for legal aid. There is a risk that this reform will **deprive vulnerable groups** of access to justice³⁸⁵.

The economic crisis has also put **additional pressure on the civil legal aid service** in Ireland, as the numbers qualifying for legal aid increased due to the large increase in unemployment and dependency on social welfare. The demand for civil legal aid increased by over 90% between 2006 and 2011, while staffing decreased by 16% over the same period. According to the estimates, people waited an average of 58 weeks for a first appointment with a solicitor and a further 79 weeks for full representation³⁸⁶.

Furthermore, delays in the appointment of legal counsel in Ireland have resulted in clients being hindered in their capacity to resolve their difficulties while waiting for legal representation. The delays have also caused an increase in the number of **people who are forced to represent themselves**, despite cases being very complex and requiring legal representation for a fair hearing. Justice is further delayed, as the courts are required to guide self-represented clients through the legal process³⁸⁷.

Finally, it is worth noting that, due to the collapse of the housing market and the increase in the number of people in negative equity during the recession, several people face the prospect of losing their homes in Ireland. However, under the current guidelines for civil legal aid, most of the issues regarding rights over land are not covered by legal aid, which is leading to people **not having the necessary access to legal advice** and representation which they need³⁸⁸.

8.4.3. Costs of proceedings

Concerns have been voiced, even by court rulings in Spain, that there had been a lack of proportionality between the measures imposing **additional costs of justice for citizens**, and their purchasing power to pay for those expenses³⁸⁹. This leads to unequal access to

³⁸⁴ General Council of the Judiciary, 'The Spanish Judiciary in figures 2013 *(La Justicia dato a dato)*', 2013, available at: <http://www.poderjudicial.es/cgpj/es/Temas/Estadistica-Judicial/Analisis-estadistico/La-Justicia-dato-a-dato/La-justicia-dato-a-dato---ano-2013.%20at%20p.%2041>.

³⁸⁵ Macy, C., 'Legal aid: an unjust reform (*Aide juridique : une réforme injuste*)', *La Revue nouvelle*, February 2014.

³⁸⁶ FLAC, 'Note to CCBE on Access to Justice in Ireland', 19 September 2014 (not yet published online).

³⁸⁷ FLAC, 'Note to CCBE on Access to Justice in Ireland', 19 September 2014 (not yet published online); Stakeholder interview, Senior Research and Training Officer, Irish Human Rights and Equality Commission, September 2014.

³⁸⁸ FLAC, 'Note to CCBE on Access to Justice in Ireland', 19 September 2014 (not yet published online).

³⁸⁹ Provincial Court of Pontevedra, Section 1. Ruling 168/12, of 29 July 2014, available at <http://www.abogacia.es/wp-content/uploads/2014/09/Auto-tasa-recurso-mercantil.pdf> (in Spanish); and Supreme Court of Spain, Fourth Chamber, 'Non-jurisdictional agreement of the Court on court fees on social and labour matters, of 5 June 2013 (*Acuerdo del Pleno No Jurisdiccional de la Sala Cuarta del Tribunal Supremo de 05-06-2013, sobre las tasas en el Orden Social*)', available at: <http://www.poderjudicial.es/cgpj/es/Poder-Judicial/Tribunal-Supremo/Jurisprudencia-/Acuerdos-de-Sala/Acuerdo-del-Pleno-No-Jurisdiccional-de-la-Sala-Cuarta-del-Tribunal-Supremo-de-05-06-2013--sobre-las-tasas-en-el-Orden-Social>.

justice. Justice in Portugal is considered to have become more expensive³⁹⁰. Likewise, access to justice in Italy has become more costly and difficult, with Governments only being preoccupied with cutting costs with reforms which have been described as erratic and not based on any coherent strategy³⁹¹. In Spain, the opposition to judicial reform led towards the creation of the Platform 'Justice for all' (*Plataforma Justicia para Todos*) in 2012³⁹².

While new fees were imposed in Spain, no legal provision was enacted for those **costs to be reclaimed** by a successful party. Hence, the costs of civil appeals and appeals in cassation, when these are won by the appellant, are not reimbursed due to this legal loophole. Awarding costs is also uncommon in family-related disputes. Fees are also non-reimbursable when the other litigant is the recipient of legal aid, or when the other party is the Public Prosecutor, who legally cannot be ordered to pay costs.

8.4.4. Effectiveness of judicial protection

The effectiveness of judicial protection may depend on many factors, including the sufficiency and adequacy of courts, staff and the equipment provided. The reorganisation of courthouses and the closure of smaller courts in Italy were seen as a way to **reduce waste and inefficiency** in the use of public resources³⁹³.

The Spanish reform of the justice system is criticised for **hindering the right to effective judicial protection**³⁹⁴. Accordingly, in 2013, the Governments of Andalusia, Aragon, the Canary Islands and Catalonia, as well as the Socialist parliamentary group, filed complaints of unconstitutionality before the Constitutional Court, which were declared admissible and are pending decision on the merits³⁹⁵. The Labour Courts, Courts of First Instance, and the

³⁹⁰ See Fernandez, E., 'New cost of access to justice (*Novo Custos de Acesso à Justiça*)', 2009, *Revista de Direito Público e Regulação*, no. 3, September 2009, CEDIPRE, Faculty of Law, University of Coimbra, available at: http://www.fd.uc.pt/cedipre/pdfs/revista_dpr/revista_3.pdf.

³⁹¹ Altalex, Congresso forense, 'Alpa: reverse course of the justice reforms (*Alpa: invertire la rotta sulle riforme in materia di giustizia*)', Comunicato Consiglio Nazionale Forense November 2012, available at: <http://www.altalex.com/index.php?idnot=60234>.

³⁹² This Platform was launched in 2012, and is integrated by the Spanish Council of Advocacy [Consejo General de la Abogacía Española], the Spanish Consumers' Association [Consejo de Consumidores y Usuarios] and the most representative labour unions in the country. Its goal is to publicly speak against the legislation defining fees and legal aid as it severely limits and leaves many social groups out of the real possibilities of access to justice. Moreover, one of its main claims is that the introduction of court fees imposes serious obstacles to allow workers to resort unfavourable judicial decisions to a higher authority in the first instance; thus harnessing the labour reform. Europa Press, 'The birth of the Platform Justice for All in the fight against Taxes (*Nace la 'Plataforma Justicia para Todos' para luchar contra las tasas*)', December 2012, available at: <http://www.europapress.es/sociedad/consumo-00648/noticia-nace-plataforma-justicia-todos-luchar-contra-tasas-20121205143550.html>.

³⁹³ Cittadinanzattiva, 'La manovra finanziaria e la stangata (quasi) agostana sul diritto alla giustizia', July 2011, available at: http://www.cittadinanzattiva.it/newsletter/2011_07_21-204/files/manovra_2011_gd.pdf.

³⁹⁴ Given that the impact amendments are expected to create less than 5% savings from the 306 million provided for in the Financial Report of the Act on Public Tariffs. 'Platform Justice for All considers that the fees reform continues to hamper effective judicial protection of citizens (*La Plataforma Justicia para Todos considera que la reforma de las tasas sigue dificultando la tutela judicial efectiva de los ciudadanos*)', Consejo General de la Abogacía Española Press Release, February 2013, available at: <http://www.abogacia.es/2013/02/28/la-plataforma-justicia-para-todos-considera-que-la-reforma-de-las-tasas-sigue-dificultando-la-tutela-judicial-efectiva-de-los-ciudadanos/>.

³⁹⁵ For instance, see Andalusia's complaint: Complaint of unconstitutionality No. 3035-2013, against Sections 1, 2, 3, 4, 6, 7 and 8 of article 1 of Royal Decree-Law 3/2013, of 22 February 2013, modifying the court fees regime for the Administration of Justice and the legal aid system (*Recurso de inconstitucionalidad n.º 3035-2013, contra los apartados 1, 2, 3, 4, 6, 7 y 8 del artículo 1 del Real Decreto-ley 3/2013, de 22 de febrero, por el que se modifica el régimen de las tasas en el ámbito de la Administración de Justicia y el sistema de asistencia jurídica gratuita*) BOE 12 June 2013, available at: <http://www.boe.es/boe/dias/2013/06/12/pdfs/BOE-A-2013-6276.pdf>. Also see the Socialist parliamentary group's complaint of unconstitutionality: Complaint of unconstitutionality No. 3076-2013, against Royal Decree-Law 3/2013, of 22 February 2013, modifying the court fees regime for the

Administrative Division of the National High Court³⁹⁶, also presented submissions of unconstitutionality³⁹⁷. These interventions led to new proposals of further reforms towards **'adjusting the amounts of some fees'**³⁹⁸.

In Portugal, too, the new rules to calculate justice fees added **uncertainty to the system**, while the constitutionality of the provisions introducing the reform are being questioned, given that they are seen as an excessive disproportionate burden³⁹⁹.

The implementation of the new Portuguese judicial map has had many serious **logistical problems**, as many courts need new buildings to accommodate the centralisation of services. Some of these buildings are not ready, and court services function in mobile offices near the construction sites. Even more serious is the total **collapse of the online platform** used to handle most civil processes in first instance courts. Judges have already classified the problem as extremely serious, causing chaos in the courts and effectively **preventing the guarantee of the citizens' right of access to justice**⁴⁰⁰.

Social welfare appellants in Ireland are waiting up to an average of 52.5 weeks to have their appeals heard⁴⁰¹. In addition, guidelines for decision-makers are not publicly available, resulting in a **lack of transparency**⁴⁰², in particular given that decisions are not being published⁴⁰³.

8.4.5. Increase in workload

In Cyprus and Ireland, an increase in the court workload has been recorded. It needs to be noted, however, that this increase is not a result of the specific measures aimed towards access to justice, as described in section 8.2 above, but rather, it is a consequence of austerity measures which have been introduced to tackle other issues, or possibly interfere

Administration of Justice and the legal aid system (*Recurso de inconstitucionalidad nº 3076-2013, contra el Real Decreto-ley 3/2013, de 22 de febrero, por el que se modifica el régimen de las tasas en el ámbito de la Administración de Justicia y el sistema de asistencia jurídica gratuita*), BOE, 12 July 2013, available at: <http://www.boe.es/boe/dias/2013/07/12/pdfs/BOE-A-2013-7615.pdf>.

³⁹⁶ National High Court, Administrative Chamber, Section 007, Ruling No. 28079 23 3 2013 0001361, of 6 September 2013, available at: <http://www.abogacia.es/wp-content/uploads/2013/09/2013-09-06-Audiencia-Nacional-Auto-cuestion-inconstitucionalidad-Ley-Tasas.pdf> (in Spanish).

³⁹⁷ Spanish Council of Advocacy, 'The TC streamlines the study on the resources against the blockage of judicial proceedings (*El TC agiliza el estudio de los recursos contra las tasas ante la paralización de procesos judiciales*)', September 2014, available at: <http://www.abogacia.es/2014/09/22/el-tc-agiliza-el-estudio-de-los-recursos-contra-las-tasas-ante-la-paralizacion-de-procesos-judiciales/>.

³⁹⁸ Spanish Council of Advocacy (Consejo General de la Abogacía Española), 'Catala submits a proposal 'agreed' to reform the court fees in January (*Catalá planteará en enero una propuesta 'acordada' para reformar las tasas judiciales*)', of 29 December 2014, available at: <http://www.abogacia.es/2014/12/29/catala-planteara-en-enero-una-propuesta-acordada-para-reformar-las-tasas-judiciales/>.

³⁹⁹ See Fernandez, E., 'New cost of access to justice (*Novo Custos de Acesso à Justiça*)', *Revista de Direito Público e Regulação*, no. 3, September 2009, CEDIPRE, Faculty of Law, University of Coimbra, available at: http://www.fd.uc.pt/cedipre/pdfs/revista_dpr/revista_3.pdf.

⁴⁰⁰ Portuguese Judges' Trade Union, 'Judges say in court that the situation is "very serious (*Juizes dizem que situação nos tribunais é "gravíssima"*)', 1 October 2014, Press Release, available at: <http://www.asjp.pt/2014/10/01/juizes-dizem-que-situacao-nos-tribunais-e-gravissima/>.

⁴⁰¹ FLAC, 'The Irish Social Welfare System and Access to Justice Concerns', September 2014 (not yet published online).

⁴⁰² Irish Human Rights and Equality Commission, 'Submission to the UN Committee on Economic, Social and Cultural Rights on Ireland's Third Periodic Report on the International Covenant on Economic, Social and Cultural Rights – List of Issues Stage', October 2014, available at: http://www.ihrec.ie/download/pdf/ihrec_ireland_list_of_issues_1oct14.pdf.

⁴⁰³ Irish Human Rights and Equality Commission, 'Submission to the UN Committee on Economic, Social and Cultural Rights on Ireland's Third Periodic Report on the International Covenant on Economic, Social and Cultural Rights – List of Issues Stage', October 2014, available at: http://www.ihrec.ie/download/pdf/ihrec_ireland_list_of_issues_1oct14.pdf.

with other rights – the ones dealt with in the present study, or others. Hence, the crisis has led to job losses, which has, in turn, resulted in a large number of people accessing the social welfare system which is now providing for more than 1.5 million people in Ireland. This has led to an increase in the number of clients for social services, which eventually led to a significant **rise in the number of appeals** reaching the Social Welfare Appeals Office each year⁴⁰⁴.

Since austerity measures started to be adopted, the Cypriot courts have been flooded with applications seeking to **declare the laws unconstitutional**, or seeking to set aside administrative decisions made in response to them⁴⁰⁵. A number of these cases concern the **'haircut of bank deposits', the confiscation of bank bonds and bank shares belonging to the public**, and measures affecting working conditions, such as retirement age, cuts in wages, non-payment of salaries and others.

⁴⁰⁴ In 2007, there were 19,568 live appeals, in 2013 there were almost 59,000 of them.

⁴⁰⁵ There is no statistical record of court cases per thematic subject, to enable an empirical search. Stakeholder interview, legal practitioners, September 2014.

9. RIGHTS TO FREEDOM OF EXPRESSION AND ASSEMBLY: PROTESTS AGAINST AUSTERITY MEASURES

KEY FINDINGS

- The rights to freedom of expression and assembly, for the purposes of this study, are observed jointly in the context of protests which have been taking place across the observed Member States since the beginning of the crisis.
- While some protests have been more general, with participants expressing their **dissent and dissatisfaction with austerity measures**, others were more 'thematic' and have been targeted at drawing attention only to some measures.
- Most of the protests and demonstrations were peaceful and dignified, with incidents only exceptionally being recorded. However, on several occasions, protesters resorted to vandalism, and on one occasion caused casualties. There have also been instances in which serious allegations of police violence were reported.
- Protests have sometimes provoked measures that, in turn, provoked more protests.
- Protests have provoked further reactions. Grassroots movements have surfaced as an important democratic power that may take upon itself to bring to life immediate democracy, initiate social dialogue and foster solidarity between citizens and law enforcement bodies.
- Protests have caused some negative consequences, such as limitations to the freedoms of expression and assembly by prohibiting or limiting protests. Furthermore, in response to recorded incidents, some Governments are introducing further restrictions to these freedoms, by means of highly-disputed legislation.

9.1. Rights to freedom of expression and assembly

Freedoms of expression and assembly are guaranteed by Articles 20 and 23 of the UDHR, Articles 21 and 22 of the ICCPR, Article 8 of the IESCR, Articles 10 and 11 of the ECHR and Articles 5 of both the ESC and the RESC. Article 11 of the EU Charter guarantees the right of freedom of expression and information, while Article 12 provides for the protection of freedom of assembly and association.

Indeed, freedom of expression and freedom of assembly are two separate rights. The former guarantees the 'right to hold opinions and to receive and impart information and ideas without interference by public authority'⁴⁰⁶, whereas the latter provides for the protection of the 'right to freedom of peaceful assembly'⁴⁰⁷. However, in the context of this particular study, they are observed at the same time, and in relation to the same events. The protests in the Member States, analysed in this section, were provoked by austerity measures. As such, they served as a platform for groups of individuals to express their opinions. However, these opinions were expressed by means of a public assembly, staging protests, and organising other forms of manifestations. In such situations, it is difficult to

⁴⁰⁶ ECHR, Article 10 and EU Charter, Article 11.

⁴⁰⁷ ECHR, Article 11 and EU Charter, Article 12.

draw the line between freedom of expression and freedom of assembly, hence, either or both of these guarantees are being used interchangeably and without prejudice to any official definition or interpretation of these notions.

As with all other rights dealt with in the present study, these two rights are not absolute, i.e. they are guaranteed, but only under certain conditions. In that regard, one important element has to be present – the assembly needs to be peaceful. As soon as the assembly loses this attribute, the State not only has the right, but also the duty, to intervene in order to protect the rights and freedoms of others. At the same time, opinions need to be expressed without interference by a public authority, unless such an interference is **'necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary'**⁴⁰⁸.

9.2. Overview of the protests⁴⁰⁹

'[W]hile the impact of the crisis on civil and political rights has yet to be fully evaluated, it is clear that the crisis has magnified social unrest, leading sometimes to violent repression, and has multiplied the failures to respect basic rights such as, for instance, freedom of expression and the right to information'⁴¹⁰.

All of the observed Member States have witnessed protests being staged in response to imposed austerity measures. Events were organised in protest against interventions with all the rights observed, with more or less engagement needed by the law enforcement bodies.

Austerity raised much concern in **Belgium**, which has led to many protests. Protests were quiet, peaceful and, except in one isolated case, no specific incident or overflow was reported. Hence, on 2 December 2011, 80,000 Belgian citizens (50,000 according to the police) took to the streets in Brussels, to protest **against austerity measures** taken by the then-incoming Government⁴¹¹. As the interventions continued, on 6 June 2013 between 25,000 and 30,000 protesters, according to police estimates, staged a march in Brussels. They were protesting against **austerity and wage freezes**⁴¹² and trade union organisers said that as many as 35,000 actually showed up.

Anti-austerity demonstrations in **Cyprus** have invariably been peaceful. Fewer protests have taken place in recent months than in the months preceding and following the **'deposit haircut'**, presumably because social movements have, to a large extent accepted the

⁴⁰⁸ ECHR, Article 10.

⁴⁰⁹ A terminological clarification: protests within the context of the present study are considered to be organised or spontaneous events which were staged to express opinions, demonstrate support or show disapproval of any of the austerity measures regardless of whether a particular intervention was included in the analysis of the present report.

⁴¹⁰ European Parliament, AFET Committee, 'Report on the impact of the financial and economic crisis on human rights', March 2013, available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A7-2013-0057+0+DOC+XML+V0//EN>.

⁴¹¹ Le Monde, 'Tens of thousands of Belgians protest in the street against austerity (*Des dizaines de milliers de Belges dans la rue contre l'austérité*)' December 2011, available at: http://www.lemonde.fr/europe/article/2011/12/02/des-dizaines-de-milliers-de-belges-dans-la-rue-contre-l-austerite_1612710_3214.html.

⁴¹² Dhnet, 'Union protest : between 25,000 and 35,000 participants (*Manifestation des syndicats: entre 25.000 et 35.000 participants*)', June 2013, available at: <http://www.dhnet.be/actu/belgique/manifestation-des-syndicats-entre-25-000-et-35-000-participants-51b7374ee4b0de6db975db1d>.

inevitability of the measures requested by the Troika. Protests were staged by: bondholders in response to financial losses; pensioners against the cuts in their pensions; students against the introduction of bus fares for their transport to and from schools; public servants regarding their wage cuts; bank employees regarding the loss of their benefits; social activists opposing privatisations; teachers opposing budget cuts; all opposition, trade unions and social movements against the 'haircut of deposits'.

The severe austerity measures adopted in **Greece**, in the wake of the deepening economic crisis, provoked a number of strikes and demonstrations as a reaction to measures affecting specific professions, e.g. taxi drivers, doctors, judges, lawyers, teachers and tax authorities, or to specific Government measures, e.g. shutting down the State radio-television network. In addition, several massive demonstrations were staged. The demonstrations were so numerous that they can actually be divided into three cycles. The **first cycle of anti-austerity demonstrations** took place in early 2010. The Papandreou Government's decision to commence a harsh austerity programme in exchange for financial assistance by the EU and the IMF led to a nationwide strike. The strike in Athens became extremely violent, with vandalism by some protesters who, using petrol bombs, set fire to dozens of buildings in the city centre – a result of which three bank employees suffocated to death⁴¹³. The **second cycle of social unrest** began on 25 May 2011, with peaceful protests against the new round of austerity measures in over 38 cities. In Athens, following a massive rally with approximately 30,000 people⁴¹⁴, a group of protestors remained in Syntagma Square overnight, occupying the square⁴¹⁵. In June, the unions called for a 48-hour strike, which turned violent in the night of 28 June. The police made at least 19 arrests while, according to the Hellenic Police, 38 policemen were injured. By the night of 29 June approximately 700 citizens had to seek help at an improvised clinic and 45 of them were transferred to the hospital⁴¹⁶. The Ministry of Health announced that by the end of the riot, 99 persons had been taken to various hospitals in Athens⁴¹⁷. The **third cycle of anti-austerity demonstrations** began on 12 February 2012. Some reports noted that as many as 80,000 people joined the demonstration in Athens and 20,000 people in Thessaloniki⁴¹⁸. As a result, several buildings, cafes and a movie theatre in Athens were set ablaze, 25 protesters and 40 officers were injured in the clashes and authorities detained at least 30 people⁴¹⁹.

While there have been some public protests against austerity measures, there has been a limited number overall, and large scale public protests and riots remain unlikely in **Ireland**. Little disturbance by Governments or police during protests or public demonstrations has been reported.

A number of protests have been staged in **Italy** since 2008, against austerity measures, cuts in public spending, and precarious work. At times, protesters directly contested the

⁴¹³ Pappas, T., *Populism and Crisis Politics in Greece* (Palgrave Macmillan, 2014), p. 82 – 83. 'Three dead as Greece protest turns violent', BBC News, 5 May 2010, available at: <http://news.bbc.co.uk/2/hi/8661385.stm>.

⁴¹⁴ 'In the footsteps of the Spanish Indignados (Στα χνάρια των Ισπανών αγανακτισμένων)', skai.gr newssite, 25 May 2011, available at: <http://www.skai.gr/news/greece/article/170468/oi-aganaktismenoi-diadilonoun-stis-ellinikes-poleis-/>.

⁴¹⁵ Simiti, M., 'Rage and Protest: the case of the Greek Indignant movement', Hellenic Observatory Papers on Greece and Southeast Europe, GreeSE Paper No. 82, February 2014, p. 5.

⁴¹⁶ 'Stone-war until late in the Syntagma square', skai.gr newssite, 29/06/2011.

⁴¹⁷ Aggelioforos newspaper, 'The Centre of Athens is as if bombarded – 99 persons in hospitals (Βομβαρδισμένο τοπίο» το κέντρο της Αθήνας - 99 άνθρωποι στο νοσοκομείο)', November 2014, available at: <http://www.aggelioforos.gr/default.asp?pid=7&ct=1&artid=100099>.

⁴¹⁸ BBC News, 'Buildings ablaze as Greek MPs vote on austerity plan', 12 February 2012, available at: <http://www.bbc.co.uk/news/world-europe-17003432>.

⁴¹⁹ CNN News, 'Amid clashes, Greek Parliament approves austerity measures', 13 February 2012, available at: <http://edition.cnn.com/2012/02/12/world/europe/greece-debt-crisis/index.html>.

EU: 'we protest against the Treaties and the diktat of the European Union'. A general strike in October 2013 brought to the streets, for three days, tens of thousands of teachers, lawyers, firefighters, unions and 'black blocks', amongst others. The German embassy was attacked⁴²⁰. In November 2012, protests in 87 Italian cities saw some violent clashes between protesters and the police⁴²¹. Earlier that year, students protested in various cities 'against the Government and the European Union, which together deprive millions of young people of the right to education, employment and the future'⁴²².

The civic movement that developed in reaction to austerity measures generated a wave of protests of unprecedented proportions in **Spanish** democratic history. In response to a civic initiative, camps were set up in Plaza del Sol (Madrid) and Plaza Catalunya (Barcelona) as a way of protest. This brought about the emergence of the 15-M Movement which aimed to promote a more participatory democracy. Multiple demonstrations followed in consequence, calling for respect of fundamental rights affected by the crisis. One of the most remarkable was the General Strike on 14 November 2012, to which, according to union organisers, 76.7% of workers responded.

Since 2008, there have been a significant number of protests against austerity measures and the entire economic and social situation **Portugal** has been facing. In fact, the crisis has been the reason for some of the largest demonstrations since the post-revolutionary period of 1974-1976. Overall, most protests have been peaceful, but there have been a few episodes of violence by the police, justified by the Government, but highly contested by the participants. In November 2010, thousands of people demonstrated against the NATO summit held in Lisbon, and the organisation itself – considered a symbol of the crisis and the capitalist world. The police prevented some demonstrators from joining the march, on the grounds that they were anarchists. Several EU citizens were stopped at the Portuguese border, accused of having anti-NATO propaganda, and sent away. This led to demands of justification at the European Parliament⁴²³. Further protests were organised on 15 October and 24 November 2011, the former engaging 100,000 people in Lisbon alone, with demonstrators occupying the Parliament's staircase⁴²⁴. Another general strike took place on 22 March 2012 when some protesters and two France Press journalists were violently

⁴²⁰ La Repubblica, 'October Events, security alert: three marches in a week in Rome (*Manifestazioni di ottobre, allarme sicurezza: A Roma tre cortei in una settimana*)', 22 September 2013, available at: http://roma.repubblica.it/cronaca/2013/09/22/news/manifestazioni_di_ottobre_allarme_sicurezza-67056714/. La Stampa, Roma blindata, sfilano i Cobas: Domani il pericolo «black bloc», 18 October 2013, available at: <http://www.lastampa.it/2013/10/18/italia/cronache/roma-blindata-per-giorni-di-proteste-trovato-furgone-con-armi-cinque-fermi-Atmt9pAgH87TrMMuGuvh2K/pagina.html>. La Stampa, Scontri e cariche a Roma per l'assedio ai ministeri, 19 October 2013, available at: <http://www.lastampa.it/2013/10/19/italia/cronache/roma-blindata-per-il-corteo-la-manifestazione-in-diretta-3TixLi8FOf6TV9Bt78RwKk/pagina.html>.

⁴²¹ La Repubblica, 'Eight arrests in Rome, injured in Turin and Milan: Grillo: "If there's war, police will join the protest" (*Otto arresti a Roma, feriti a Torino e Milano: Grillo: "E' guerra, polizia si unisca a protesta"*)', 12 November 2012, available at:

http://www.repubblica.it/scuola/2012/11/14/news/cortei_e_proteste_in_tutta_italia_guerriglia_a_roma-46657854. La Repubblica, Sciopero Cgil e quattro cortei in città: Scontri sul lungotevere, 14 November 2012, available at:

http://roma.repubblica.it/cronaca/2012/11/14/news/scuola_sciopero_cgil_e_proteste_quattro_cortei_in_citt_rischi_o_parali-46603294/.

⁴²² La Repubblica, Studenti, proteste e scontri in tutta Italia: Profumo: "Pronto al dialogo, ma no violenza", 5 October 2012, available at:

http://www.repubblica.it/scuola/2012/10/05/news/studenti_protestano_in_tutta_italia_nel_mirino_monti_crisi_e_austerit-43899225/.

⁴²³ Question to the European Commission E-010232/2010, under article 117.º of the Regime, by MPs Marisa Matias (GUE/NGL), Miguel Portas (GUE/NGL) and Rui Tavares (GUE/NGL), 9 December 2010.

⁴²⁴ Stakeholder interview, journalist at Public Television. See also the news coverage at public.pt Dia dos indignados ao minuto: organização fala em 100 mil manifestantes em Lisboa, 15 October 2011, available at: <http://www.publico.pt/mundo/noticia/dia-dos-indignados-minuto-a-minuto-manifestacoes-em-portugal-arrancam-as-15h-1516656>.

beaten by the police in Lisbon⁴²⁵. On 5 September 2012, the first demonstration organised by the **'Que se lixe a Troika!' (F**k Troika!) Movement took place. It was called without the support of the traditional opposition forces, such as unions, and took place in several cities, engaging 500,000 people in Lisbon and another 100,000 in Oporto.**

Further sections will discuss demonstrations and protests staged in protest of interventions on specific rights dealt with in the present study, even though sometimes, the rights affected by the measures against which the protests were directed, do not fully match the rights covered by the study.

9.2.1. Right to education

Protests against measures in education were organised in Cyprus, Spain, Ireland and Portugal. It should be noted that protests sometimes exceeded the scope of the right to education covered by the study. Hence, **high school teachers' protests in Cyprus, or demonstrations of university students in Ireland, do not fall within this scope.** It is, however, worth noting that concerns in relation to the right to education were raised at all levels.

In Cyprus, on 19 December 2012, secondary school teachers walked out of classrooms on **the day's last class**, protesting against austerity measures impacting their sector, as a **criticism of the Christofias Government's failure to adequately negotiate with Troika the terms of their employment**⁴²⁶. Furthermore, Cypriot students also protested against the **introduction of bus fares**, while teachers protested against opposing **budget cuts** in education.

In Spain, on 22 May 2012, there was a **general strike against the Government's cutbacks**, by all educational unions requesting the presence of the whole educational community. The movement is also known as **'the Green Tide'** due to the colour of the T-shirts the demonstrators have worn since 2011, when the State Platform for Public Education created them with a printed slogan on it: **"Public school for all"**⁴²⁷. Moreover, there was a week of demonstrations by **student organisations** from 8-14 October 2012⁴²⁸. Another general strike took place on 9 May 2013, followed by a larger general strike on 24 October 2013. The unions said 83% of schools and public high schools took part in the strike⁴²⁹.

On 3 November 2010, a student protest took place in Dublin against **university registration fees** and further cuts to the student maintenance grant.

On 8 March 2008, a large demonstration took place, of public school teachers organised by the unions. Around 100,000, out of 150,000+ professionals, took part in the demonstration. The most important demands were the preservation of quality public

⁴²⁵ Stakeholder interview, journalist at public television, September 2014.

⁴²⁶ **Cyprus Mail**, 'Teachers walk out early to protest austerity', 20 December 2012.

⁴²⁷ Europa Press, Huelga general en la educación contra los recortes, El Mundo, online edition, 22 May 2012, available at: <http://www.elmundo.es/elmundo/2012/05/21/espana/1337603776.html>.

⁴²⁸ Aunión, J.A., 'Familias y estudiantes endurecen la protesta contra los recortes', El País, online edition, 14 October 2012., available at: http://sociedad.elpais.com/sociedad/2012/10/14/actualidad/1350245826_263226.html.

⁴²⁹ Silió, E., 'Alumnos y padres tiran de la huelga' El País, online edition, 24 October 2013, available at: http://sociedad.elpais.com/sociedad/2013/10/23/actualidad/1382557688_653585.html.

schools, and the opposition to **new career rules** that established a compulsory examination for all teachers with less than five years' experience⁴³⁰.

On 15 September 2012, the first demonstration organised by the above-mentioned '**Que se lixe a Troika!**' (F**k Troika!) Movement was organised in Portugal, protesting against measures imposed in relation to the enjoyment of the right to education, amongst other measures.

9.2.2. Right to healthcare

Similar to the Spanish '**Green Tide**' in the educational field, public health unions united as '**the White Tide**' to demonstrate against austerity measures of the Rajoy Government, on 17 February 2013. The first national demonstrations took place in 15 capital cities⁴³¹. Madrid – the city where the movement of '**the White Tide**' emerged, staged and promoted multiple demonstrations.

On 11 July 2012, doctors staged a strike against healthcare and career reforms that lasted two days. Thousands of doctors demonstrated in Lisbon in defence of the NHS⁴³². During the first protests organised by the '**Que se lixe a Troika!**' on 5 September 2012, in Portugal, the protesters also invoked interventions into the right to healthcare and the maintenance of the NHS.

9.2.3. Right to work

In Belgium, large demonstrations were staged on 29 January 2010, when **more jobs and greater respect for workers** were demanded, and on 19 June 2012, when demonstrators protested against the reforms to **the benefits system**. The aim was to denounce the Di Rupo Government measures affecting **young people and the labour market**⁴³³. On 7 February 2013, up to 10,000 civil servants demonstrated to express their dissatisfaction with the proposed public sector reform. On 21 February 2013, up to 40,000 union militants demonstrated in Brussels against the changes in the **automatic wage index**. On 6 June 2013, 25,000-35,000 protesters staged a march in Brussels against **austerity and wage freezes**⁴³⁴.

On 10 April 2013, about 300 **Cyprus Airways employees** protested outside the Presidential Palace whilst the Council of Ministers was meeting to discuss the future of the airline. The employees asked for the Ananastasiades Government's support to prevent the airline from closing and for them to take an immediate political decision⁴³⁵. Furthermore,

⁴³⁰ Stakeholder interview, journalist at Public Television. See also Expresso '100 mil professores na rua', 8 March 2008, available at: <http://expresso.sapo.pt/100-mil-professores-na-rua=f262140>.

⁴³¹ Sahuquillo, M., 'La 'marea blanca' contra la privatización y los recortes se extiende', El País, online edition, 17 Febrero 2013, available at: http://sociedad.elpais.com/sociedad/2013/02/17/actualidad/1361100253_706389.html.

⁴³² See the news cover, for example, in: Soares, M., 'Doctors say they have had the largest demonstration ever (*Médicos dizem ter feito a maior manifestação de sempre*)', 11 July 2012, available at: <http://www.publico.pt/sociedade/noticia/sindicatos-esperam-quatro-mil-medicos-na-manifestacao-1554444>.

⁴³³ Eironline, 'Protests over reforms to benefits system' 8 January 2013, available at: <http://www.eurofound.europa.eu/eiro/2012/06/articles/be1206011i.htm>.

⁴³⁴ Dhnet, 'Union protest : between 25,000 and 35,000 participants (*Manifestation des syndicats: entre 25.000 et 35.000 participants*)', 6 June 2013, available at: <http://www.dhnet.be/actu/belgique/manifestation-des-syndicats-entre-25-000-et-35-000-participants-51b7374ee4b0de6db975db1d>.

⁴³⁵ Cyprus Mail, 'CY employees protest at palace', 11 April 2013, available at: <http://archives.cyprus-mail.com/2013/04/11/cy-employees-protest-at-palace/>.

Cypriot public servants protested regarding their wage cuts, while bank employees staged demonstrations in response to the loss of their benefits.

In Spain, the first wave of labour reforms provoked a general strike on 29 September 2010⁴³⁶. The second wave on 19 February 2012, led to the **most massive union mobilisation** in Madrid in recent years. There were an estimated half a million participants in Madrid alone, and another 450,000 participants in Barcelona, 80,000 in Valencia and many more in another 54 Spanish cities⁴³⁷.

A number of protests against austerity measures, cuts in public spending, and precarious work, have taken place in Italy since 2008.

In Portugal on 12 March 2011, the **'Struggling Generation'** (*Geração à rasca*) demonstrations took place, across 10 cities, protesting against austerity, the economic crisis, and labour rights. They were the largest demonstrations since the democratic revolution in 1974, and were organised spontaneously by means of social media, without the involvement of any existing structures⁴³⁸. Moreover, the **'Que se lixe a Troika!'** Movement also staged protests against the measures interfering with the right to work. **One of the most contested measures was the reduction of employers' contributions and the rise of the employees' contributions** to the social security system announced by the Government, and subsequently dropped after these demonstrations⁴³⁹.

9.2.4. Right to a pension

The swift introduction of **pension reforms** in Belgium sparked a direct reaction from unions who criticised **the lack of social dialogue and negotiation on the issue**. The public sector led the protest by organising a strike on 22 December 2011, followed by a **general strike on 30 January 2012**. A joint statement by union leaders said the strike's aim was to convince the Government and employers to fully take into account the social situation of workers and those on benefits.

Protests against cuts in pensions were also organised in Cyprus.

9.2.5. Access to justice

When Italy adopted measures ordering the closure of a **number of courts**, lawyers' unions called a two-day strike, in April 2013, to protest against the cuts⁴⁴⁰. Furthermore, in protest

⁴³⁶ González, J.S., 'Three decades of labour reforms (*Tres décadas de reformas laborales*)', El País, online edition, 10 February 2012, available at: http://economia.elpais.com/economia/2012/02/10/actualidad/1328866949_808378.html.

⁴³⁷ Recudero, M., 'Thousands of people say 'no' to the reform (*Miles de personas dicen 'no' a la reforma*)', El Mundo, online edition, 19 February 2012, available at: <http://www.elmundo.es/elmundo/2012/02/18/espana/1329602232.html> and Quílez, S., 'The first manifestation against the labour reform gathers a hundred thousand people (*La primera manifestación contra la reforma laboral concentra a cientos de miles de personas*)', rtve.es, 19 February 2012, available at: <http://www.rtve.es/noticias/20120219/primera-manifestacion-contra-reforma-laboral-concentra-cientos-miles-personas/499317.shtml>. See moments of the demonstrations at El País, [Manifestaciones en toda España contra la reforma laboral](http://www.elpais.com).

⁴³⁸ Stakeholder interview, journalist at Public Television. See also Expresso, 'Manifestação "Geração à Rasca" chega ao Rossio com mais de 200 mil pessoas', 12 March 2011, available at: <http://expresso.sapo.pt/manifestacao-geracao-a-rasca-chega-ao-rossio-com-mais-de-200-mil-pessoas-fotos-e-video=f637298#ixzz3Oiw6F9Am>.

⁴³⁹ Stakeholder interview, member of the Que se lixe a Troika! – F**K Troika!. See also Blitz, 'Quase 300 mil pessoas na manifestação de 12 de março', undated, available at: <http://blitz.sapo.pt/quase-300-mil-pessoas-na-manifestacao-de-12-de-marco-veja-fotos-e-videos=f71663#ixzz3Oiwbs5Kd>.

⁴⁴⁰ Altalex, 'Avvocati in sciopero il 29 e 30 maggio contro il decreto taglia-tribunali', citing a press release of a lawyers' union, 23 April 2013, available at: <http://www.altalex.com/index.php?idnot=62646>. Altalex, 'Sciopero avvocati 29-30 maggio: il resoconto', 29 May 2013, available at: <http://www.altalex.com/index.php?idnot=63125>.

against the **streamlining of civil trials**, lawyers went on strike between 8 and 16 July 2013, delaying a number of trials⁴⁴¹.

In response to the adoption of the **new judicial map** in Portugal, the Bar organised protests, including a demonstration at the Parliament⁴⁴², and has asked for the new map to be reversed or annulled. At the beginning of September 2014, the Bar even pressed criminal charges against the Justice Minister, for violation of the right of access to justice and aggression against the rule of law.

9.2.6. Other rights – right to property

Protests regarding austerity measures in Cyprus started even before the signing of the MoU with the Troika and prior to the haircut, in order to protest against the **loss of investments**. On 6 February 2013, only weeks before the haircut, bondholders protested outside the headquarters of the Cyprus Popular Bank and were stopped by the police from entering into the building. During the preceding week, the bondholders stormed the Bank of Cyprus headquarters, pushing their way inside and damaging the furniture before the police arrived on the scene⁴⁴³. The largest mobilisation was held on 19 March 2013, when all opposition parties and several other movements joined forces in order to protest *en masse* outside the House of Parliament against the adoption of a bill that would allow a 'haircut on all deposits' in all banks, including those under EUR 100,000. In spite of this, there were no incidents of violence on either side.

On 12 December 2012, angry Cypriot investors, who believed that they had been duped by bankers into buying high-yield bank bonds, stormed the House of Parliament and disrupted a committee meeting discussion on the issue, in order to protest about the free-fall in the value of bonds. The protestors were stopped by the police at the last minute before entering the conference area. The police claimed they used minimum force whilst the protestors claimed the force was above minimum but there were no injuries and no arrests.

9.2.7. Other rights – right to housing

With regard to the **right to housing**, Spanish eviction cases generated a social movement that resulted in the Platform of People Affected by Mortgages (*Plataforma de Afectados por la Hipoteca*, PAH). The PAH originally emerged in Barcelona in 2009, with the aim of modifying mortgage legislation to allow mortgage debt forgiveness after eviction. In addition to driving a campaign for retroactive non-recourse debt, the PAH aimed to achieve the self-organisation of those affected. On 16 February 2013, the PAH organised a manifestation in response to the interferences with the right to housing in Spain.

⁴⁴¹ Reuters, 'Italy's lawyers to strike after minister says they block reforms', 4 July 2013, available at: <http://www.reuters.com/article/2013/07/04/italy-lawyers-strike-idUSL5N0FA2KE20130704>.

⁴⁴² JN, 'Bastónária lawyers demand repeal of the new judicial map (*Bastónária dos advogados exige revogação do novo mapa judiciário*)', 15 July 2014, Press Release, available at: http://www.jn.pt/Paginalnicial/Sociedade/Interior.aspx?content_id=4027995.

⁴⁴³ Cyprus Mail, 'Bondholders protest outside Popular Bank HQ', 7 February 2013, available at: <http://archives.cyprus-mail.com/2013/02/07/bondholders-protest-outside-popular-bank-hq/>.

9.3. Incidents recorded

Overall, demonstrations and protests went peacefully and without any, or with minor incidents, even in Greece, which recorded the gravest consequences, with casualties. It is, however, worth mentioning the instances in which the protests did not take place so peacefully. This is particularly important because it has been widely argued that, at least in certain instances, freedom of expression and freedom of assembly have been subject, sometimes, to violent repression⁴⁴⁴.

Policing demonstrations can be challenging and law enforcement officials may, at times, have to use lawful force in order to maintain public order and prevent crime. Nonetheless, in those instances, police enforcement officials must comply with international law and standards⁴⁴⁵. The seriousness of the incidents ranges from those where some actions possibly overstepped the definition of a peaceful protest, to clashes with the police with no, or only a few, injured or arrested protesters, to those which ended with casualties.

Among the protests from the 'mild' end of the scale, on 2 March 2013, during the second huge demonstration called for by the 'Que se lixe a Troika!', some demonstrators **occupied the Parliament's staircase** and remained there all night. In December 2012 in Cyprus, angry investors, who believed that they had been duped by bankers into buying high-yield bank bonds, stormed the House of Parliament and **disrupted a committee meeting** discussion on the issue. The protestors were stopped by the police at the last minute before entering the conference area. The police claimed that they used minimum force whilst the protestors claimed the force was above minimum but there were **no injuries and no arrests**. Similarly, in February 2013 up to 40,000 union militants demonstrated in Brussels. Unionists reported that **some workers were reprimanded** for participating in the protest⁴⁴⁶.

In November 2010, following a student protest which took place in Dublin, **40 complaints of police brutality** were made to the Garda Síochána (Police) Ombudsman Commission, of which **24 were admitted**⁴⁴⁷. Reportedly, one protester had been knocked unconscious⁴⁴⁸. Two others were thrown 'by their ankles' and one pulled by her hair, one was assaulted and incurred facial injuries, and another was trampled by a Garda police horse⁴⁴⁹. Another student claimed a Garda had shouted at her to get off the street and was struck by a baton. This, a week later, **led to a 500-strong student protest** against the behaviour of the Garda⁴⁵⁰.

⁴⁴⁴ European Parliament, AFET Committee, 'Report on the impact of the financial and economic crisis on human rights', March 2013, available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A7-2013-0057+0+DOC+XML+V0//EN>.

⁴⁴⁵ Amnesty International, 'Greece: Unlawful police violence during protests must end and perpetrators held accountable', 21 November 2014, available at: <http://www.amnesty.org/en/library/asset/EUR25/009/2014/en/4c26389f-cf18-4043-9543-f12058a244e2/eur250092014en.html>.

⁴⁴⁶ ITUC, Survey of violation of Trade Unions Rights, undated, available at: <http://survey.ituc-csi.org/Belgium.html?lang=en#tabs-3>.

⁴⁴⁷ Garda Síochána Ombudsman Commission, 'Report in accordance with section 103 of the Garda Síochána Act, 2005 relating to the policing of the Union of Students in Ireland Protest March on 3 November 2010', 2010, available at: http://www.gardaombudsman.ie/docs/publications/Student_Protests_Section_103_Report.pdf.

⁴⁴⁸ Duncan P., 'Up to 500 students protest over Garda behaviour', 11 November 2010, Press Release, available at: <http://www.highbeam.com/doc/1P2-26343796.html>.

⁴⁴⁹ The Belfast Telegraph, 'Student protest brings chaos to Dublin streets', 4 November 2010, Press Release, available at: <http://www.belfasttelegraph.co.uk/news/local-national/republic-of-ireland/student-protest-brings-chaos-to-dublin-streets-28568591.html>.

⁴⁵⁰ Duncan P., 'Up to 500 students protest over Garda behaviour', 11 November 2010, Press Release, available at: <http://www.highbeam.com/doc/1P2-26343796.html>.

According to Amnesty International, with respect to demonstrations against austerity measures in Greece, 'numerous allegations have been received regarding excessive use of force, including the **use of chemical irritants**, against peaceful or largely peaceful demonstrators, and the **use of stun grenades** in a manner that violates international standards'⁴⁵¹. The organisation has also reported cases where **journalists have been ill-treated** by the police while trying to cover anti-austerity and other demonstrations in Greece with detrimental effects on the freedom of expression⁴⁵². In Spain, the Government's response to the protests has been seen as being largely repressive, with reports of abuse of administrative sanctions against demonstrators and excessive use of force by police forces⁴⁵³.

On 28 June 2011, a 48-hour strike started in Athens which ended with **38 policemen and 700 citizens injured**⁴⁵⁴, and from which at least **99 persons had been hospitalised**. During the protests, the police corralled demonstrators into the metro station outside Parliament in Syntagma Square, and **fired tear gas** on them. On the other hand, **protesters set fire to a post office** on the ground floor of the finance ministry in the square⁴⁵⁵. On 12 February 2012, 175 businesses in the centre of Athens suffered damage and 45 were completely destroyed. The estimated cost of the destruction of facilities and equipment and thefts may have amounted to millions of Euros – according to the Athens Chamber of Commerce and Industry⁴⁵⁶. In 2012 alone, **796 demonstrations with fewer than 200 participants** took place in Athens, making the city centre unapproachable⁴⁵⁷.

The most serious incidents, however, were recorded in May 2010, when following the attack of vandals by petrol bombs, dozens of buildings in the centre of Athens were set on fire and as a result of this, **three bank employees suffocated to death**⁴⁵⁸.

⁴⁵¹ Amnesty International, 'Police Violence in Greece – Not Just 'Isolated Incidents'', 2012, available at: <http://www.amnesty.org/en/library/asset/EUR25/005/2012/en/edbf2deb-ae15-4409-b9ee-ee6c62b3f32b/eur250052012en.pdf>.

⁴⁵² Amnesty International, 'Greece: Attacks against journalists during protests have detrimental effect on freedom of expression', May 2012, available at: <http://www.amnesty.org/en/library/asset/EUR25/003/2012/en/4ddfb2a2-9af7-4278-810b-c3a360381494/eur250032012en.html>. Amnesty International, 'Greece: Unlawful police violence during protests must end and perpetrators held accountable', November 2014, available at: <http://www.amnesty.org/en/library/asset/EUR25/009/2014/en/4c26389f-cf18-4043-9543-f12058a244e2/eur250092014en.html>.

⁴⁵³ See the latest version of Amnesty International, 'The State of the World's Human Rights', p. 120, available at: <http://files.amnesty.org/air13/AmnestyInternationalAnnualReport2013completeen.pdf>. The 2012 Report specifically highlights the excessive use of force by the police corps against 15-M demonstrators, also known as 'the outraged', during May to August 2011 demonstrations. Oppenheimer, W., 'Amnistía denuncia 'el uso excesivo de la fuerza' contra el 15-M en 2011', El País, online edition, 24 May 2012, available at: http://politica.elpais.com/politica/2012/05/23/actualidad/1337800021_913384.html.

⁴⁵⁴ Mistilis K., 'Greece's revolution: Error 404 – Democracy not found', 20 October 2011, available at: <http://bulletmedia.com/article/greeces-revolution-error-404-democracy-not-found/>. Aggelioforos newspaper, 'The Centre of Athens is as if bombarded – 99 persons in hospitals', 29 November 2011, available at: <http://www.aggelioforos.gr/default.asp?pid=7&ct=1&artid=100099>.

⁴⁵⁵ BBC News, 'Greece passes key austerity vote', 29 Jun 2011, available at: <http://www.bbc.co.uk/news/world-europe-13960947>.

⁴⁵⁶ Speech of the President of the Athens Chamber of Commerce and Industry, Mr Michalos, at the conference of the Athens Chamber of Commerce and Industry 'The free movement of citizens – New scheme for protests and demonstrations in the centre of Athens', 14 March 2012, available at: http://www.acci.gr/acci/PressOffice/View_Press_Releases/tabid/521/temID/2848/View/Details/language/en-US/Default.aspx.

⁴⁵⁷ Naftemporiki Newspaper, 'With a common understanding [of the need] to establish restrictions for small demonstrations', 4 June 2013, available at: <http://www.naftemporiki.gr/story/660962/mikres-diadiloseis-sunantilipsi-gia-ti-thespsi-periorismon>.

⁴⁵⁸ Pappas, T., Populism and Crisis Politics in Greece (Palgrave Macmillan, 2014), p. 82–83. BBC News, 'Three dead as Greece protest turns violent', 5 May 2010, available at: <http://news.bbc.co.uk/2/hi/8661385.stm>.

9.4. Impacts of protests

As a democratic means of expressing popular will and opinions, the protests have had opposing effects. In certain instances, protests led to negotiations with the Governments and engagement in social dialogue, while in some others, they led to more repressive reactions.

9.4.1. Dialogue and solidarity

An overall positive impact of the crisis on the freedoms of expression and assembly emerged as a result of the development of new technologies and communication via social media. This enabled massive responses to the crisis, that were not staged by any existing political or social entity, but came from grassroots as independent and indigenous movements, possibly giving those movements more legitimacy, and at least in part, reinforcing European civil society⁴⁵⁹. In the situation where there is a lack of faith in the Government in any of its political forms among the populace, civil society groups continue to turn out mass numbers of supporters as evidence of continued political vibrancy⁴⁶⁰. Even the European Parliament recognised the important contribution of grassroots movements, **by awarding the PAH the European Citizens' Prize in 2013 for their work in defence of human rights at European and transnational levels**⁴⁶¹.

Nevertheless, when looking into particular impacts of the protests, only a few seemingly positive outcomes have been recorded. In Belgium, following the protests of 29 January 2010, when the trade unions established a united front by organising a mass demonstration in Brussels, led by the three Belgian unions and attended by up to 35,000 people, the Government reacted by holding a **meeting with the social partners**⁴⁶². In Portugal, during the massive demonstrations of 15 September 2012 by the 'Que se lixe a Troika!' Movement, one of the most contested measures was the reduction of employers' contributions and the rise of employees' contributions to the social security system announced by the Government. Following the protests, the Passos Coelho **Government dropped the proposal**⁴⁶³.

In addition, during protests on 9 December 2013, several Italian **policemen reportedly took off their helmets** when facing the protesters. While the Government denied this was to show solidarity to the protesters, a police union stated that the gesture was for the **Government to understand that 'also for policemen, enough is enough'**⁴⁶⁴.

⁴⁵⁹ Shahin J., Woodward A. and Terzis G., 'Study on the Impact of the Crisis on Civil Society Organizations in the EU – Risks and Opportunities', European Economic and Social Committee, 2013, p. 21, available at: http://ec.europa.eu/citizenship/pdf/eesc_qe-32-12-548-en-c_en.pdf.

⁴⁶⁰ Murray-Leach T., 'Crisis Discourses in Europe: Media EU-phemisms and Alternative Narratives', Background paper, The London School of Economics and Political Science – LSE, June 2014, p. 29, available at: <http://www.gcsknowledgebase.org/europe/files/2014/07/CrisisDiscoursesinEurope.pdf>.

⁴⁶¹ Equal Times, 'Spain: Fighting for the right to housing', 23 October 2013, available at: <http://www.equaltimes.org/spain-fighting-for-the-right-to#.VLVkWSvF99k>.

⁴⁶² Eironline, 'Crisis in social dialogue due to anti-crisis measures' 9 April 2010, available at: <http://www.eurofound.europa.eu/eiro/2010/02/articles/be1002019i.htm>.

⁴⁶³ Stakeholder interview, member of the Que se lixe a Troika! – F**K Troika!.

⁴⁶⁴ La Repubblica, "'Poliziotti, via i caschi". E loro li levano: La Questura: non è stato per solidarietà', 9 December 2013, available at:

http://torino.repubblica.it/cronaca/2013/12/09/foto/poliziotti_via_i_caschi_e_gli_agenti_li_tolgono-73129096/1/.

See also La Repubblica, 'Protestano i "forconi", guerriglia a Torino. Presidi in tutta Italia. "Avanti a oltranza", 9 December 2013, available at:

http://www.repubblica.it/cronaca/2013/12/09/news/sciopero_dei_forconi_l_italia_si_ferma_manifestazioni_e_presidi_in_tutte_le_citt-73095919/.

9.4.2. Destruction and repression

With respect to the negative impacts of the protests, there are impositions of limitations on the rights to freedom of expression and assembly, characterised by a surge in **State repression policies**⁴⁶⁵.

Instances of interferences with the organisation of protests were recorded in Italy and Portugal, in response to massive demonstrations and incidents which occurred or were related to those demonstrations. Furthermore, Greece and Spain introduced significant amendments to the legislation regulating the freedom of assembly. Measures that could have reduced the exercise of the right to protest were proposed in April 2014, by the Italian Minister of Interior, within the context of improving public safety in the central area of Rome⁴⁶⁶. Nonetheless, it would appear that these measures have not been adopted.

In order to minimise demonstrations, the Greek police resorted to banning demonstrations on several occasions, and in particular, during the **visits of foreign dignitaries and international events**⁴⁶⁷.

In 2013, the Italian authorities in several cities **forbade protests by the "pitchfork movement"** – a grassroots group of farmers, breeders, lorry drivers, unemployed, immigrants, and others. The reason was probably that, earlier protests by the same movement led to roadblocks, threats and acts of vandalism which caused fuel and food shortages throughout the country⁴⁶⁸. On 15 October 2013, during demonstrations against austerity measures organised by a trade union in Lisbon and Oporto, protesters were forbidden from crossing **one of the main Lisbon bridges for alleged 'safety reasons'**⁴⁶⁹.

Apart from the material damages that occurred during the incidents described in section 9.3 above, the inability of the Greek State to ensure order in the city has led **businesses to close** one-after-the other (because they suffered losses of up to 25% of their turnover)⁴⁷⁰ and consumers are afraid to shop and **visitors are hesitant** to visit the city

⁴⁶⁵ Karampampas S., 'Cycles of Protest and the "Rise of the Extremes": Political Violence in Greece in the Era of the Economic Crisis', University of Sheffield, June 2013, p. 6, as presented at the 6th Biennial Hellenic Observatory PhD Symposium 6-7 June 2013, available at: http://www.lse.ac.uk/europeanInstitute/research/hellenicObservatory/CMS%20pdf/Events/2013_PhD_Symposium/Papers%20for%20website/Karampampas%20Sotirios.pdf.

⁴⁶⁶ Jerkov B. (Il Messaggero), Alfano: Sicurezza, ecco il piano per Roma, 22 April 2014, available at: http://www.ilmessaggero.it/roma/cronaca/roma_sicurezza_piano_alfano_intervista_governo/notizie/645681.shtm.

⁴⁶⁷ 'Demonstrations banned in Athens for duration of Merkel visit', To Vima Newspaper, 11 April 2014, available at: <http://www.tovima.gr/en/article/?aid=585731>. 'Greek police ban protests during EU meetings in Athens', Reuters, 31 March 2014, available at: <http://www.reuters.com/article/2014/03/31/us-greece-ecofin-protests-idUSBREA2UOXR20140331>. Skai.gr., 'Athens: Ban of demonstrations and traffic arrangements on Wednesday due to the Presidency – Reactions by political parties (Αθήνα: Απαγόρευση διαδηλώσεων και κυκλοφοριακές ρυθμίσεις την Τετάρτη λόγω προεδρίας - αντιδράσεις κομμάτων Πηγή)', available at: <http://www.skai.gr/news/greece/article/249362/apagoreusi-ton-diadiloseon-stin-athina-tin-tetarti-logo-proedrias-adidrasi-surizad/>.

⁴⁶⁸ Catalano S. (La Repubblica Palermo), Protestano gli autotrasportatori: tir fermi in tutta la Sicilia, 16 January 2012, available at: http://palermo.repubblica.it/cronaca/2012/01/16/news/protestano_gli_autotrasportatori_tir_fermi_in_tutta_la_sicilia-28226895/; Affaritaliani, La rivoluzione dei Forconi blocca l'Italia. "Mancheranno latte, frutta e verdura", 23 January 2012, available at: <http://www.affaritaliani.it/cronache/blocco-tir-strade-in-tiit-in-tutta-italia230112.html>; Spica G. (La Repubblica Palermo), Forconi, blocchi vietati. "Ci faremo arrestare": Trovato un volantino shock: "Viva la mafia", 7 December 2013, available at: http://palermo.repubblica.it/cronaca/2013/12/07/news/scritta_choc_viva_la_mafia_viva_i_forconi_le_prefetture_siciliane_vietano_i_blocchi-72957281/?ref=search.

⁴⁶⁹ See the Information released by the Workers' Confederation – CGTP, available at: <http://www.cgtp.pt/informacao/comunicacao-social/21-inf-prop-sindical/6776-com-os-pes-sobre-rodas-marcharemos-em-protesto-pela-ponte-25-de-abril>.

⁴⁷⁰ Athens Chamber of Tradesmen, 'G. Chatzitheodosiou: Problems from demonstrations in the centre (Γ. Χατζηθεοδοσίου: Τα προβλήματα απο διαδηλώσεις στο κέντρο -βίντεο)', 31 May 2013, available at: <http://www.eea.gr/gr/el/articles/g-xatzitheodosiyo-ta-provlimata-apo-diadiloseis-sto-kentro-vinteo>.

centre⁴⁷¹. According to a study conducted by the Athens Traders Association, 45.7% of business owners in the city centre considered that the reduction in their turnover was a result of the frequent demonstrations⁴⁷².

At least partly due to those reasons, in June 2013, the Greek Government **amended legislation** regulating restrictions of outdoor assemblies⁴⁷³. The amendments are meant to require the demonstrations to be conducted in a manner that is not disruptive, except to the extent absolutely necessary, to road traffic and city socio-economic life. In cities with a population of over 100,000, small assemblies are not allowed to occupy the whole road and completely disrupt the movement of vehicles. The assessment, as to the implementation of this legislation, is largely entrusted to the competent Police Director, who issues a relevant decision that must be notified directly to the interested stakeholders.

These restrictions may be seen as predominantly directed towards restricting spontaneous, grassroots manifestations, given that they **do not apply to assemblies and demonstrations which are organised by the political parties** of the Greek Parliament, by third-level trade unions, or for assemblies of historical or anniversary character, given that protests often begin spontaneously and in the absence of any organisational structure.

In Spain, too, restrictive measures are being introduced in relation to the organisation of protests. Already in 2012, the Government began studying the reform of relevant legislation, having prepared a preliminary draft which was approved by the Council of Ministers on 29 November 2013⁴⁷⁴. However, having been presented, the preliminary draft met serious criticism from the opposition parties, civil society (such as Amnesty International⁴⁷⁵ and Greenpeace⁴⁷⁶), the judiciary, law enforcement bodies and academics⁴⁷⁷. Following discussions, a new draft was prepared and adopted. The new legislation introduces changes in the provisions regarding home searches, suspect identification, street checks, frisking and enforceable sanctions. Controversially, it was adopted by Parliament majority, despite the opposition of the entire Government⁴⁷⁸. The legislation was broadly criticised for several of its features, including very high fines (up to EUR 600,000) for offences such as photographing a police officer. Symbolically, the new law has sparked a new series of protests⁴⁷⁹.

⁴⁷¹ Speech of the President of the Athens Chamber of Commerce and Industry, Mr Michalos, at the conference of the Athens Chamber of Commerce and Industry 'The free movement of citizens – New scheme for protests and demonstrations in the centre of Athens', 14 March 2012, available at: http://www.acci.gr/acci/PressOffice/View_Press_Releases/tabid/521/ItemID/2848/View/Details/language/en-US/Default.aspx; 'Over 40 Athens hotels have closed down since 2010' 30 January 2013.

⁴⁷² *Kathimerini* Newspaper, 'The conditions for the particularly small demonstrations', 2 June 2013, available at: <http://www.kathimerini.gr/489865/article/epikairothta/ellada/oi-oroi-gia-tis-idiaitera-mikres-diadhlwseis>.

⁴⁷³ Article 131(1) of Presidential Decree 141/1991.

⁴⁷⁴ Camacho, L., and Pardo, P., (EFE). 'Seguridad ciudadana?', *Público.es.*, 29 November 2013, available at: <http://www.publico.es/politica/485865/que-sanciona-la-nueva-ley-de-seguridad-ciudadana>.

⁴⁷⁵ Amnesty International, 'Recomendaciones de Amnistía Internacional al proyecto de Ley de Reforma del Código Penal', EUR4120014-25564, 2014, available at: <https://doc.es.amnesty.org/cgi-bin/ai/BRSCGI?CMD=VERDOC&BASE=SIAI&SORT=-FPUB&DOCR=1&RNG=10&FMT=SIAIWEB3.fmt&SEPARADOR=&&INAI=EUR4120014>.

⁴⁷⁶ Cué, C., 'Safety bill calls for 30,000 euro fines for "offenses against Spain"', *El País English edition*, of 29 November 2013, available at: http://elpais.com/elpais/2013/11/29/inenglish/1385751827_730565.html.

⁴⁷⁷ Fabra, M. and Perez, F., 'Judges, lawyers and police argue that Citizens Safety Law will curtail rights', *El País English edition*, 2 December 2013, available at: http://elpais.com/elpais/2013/12/02/inenglish/1385989604_721063.html.

⁴⁷⁸ Garea, F., 'Ruling party rams controversial security legislation through Congress', *El País English edition*, of 12 December 2014, available at: http://elpais.com/elpais/2014/12/12/inenglish/1418379884_767333.html.

⁴⁷⁹ Euronews, 'New "muzzle" law sparks protests across Spain', 20 December 2014, available at: <http://www.euronews.com/2014/12/20/new-muzzle-law-sparks-protests-across-spain/>.

10. OVERVIEW OF THE IMPACT OF AUSTERITY MEASURES ON OTHER FUNDAMENTAL RIGHTS ACROSS THE MEMBER STATES

KEY FINDINGS

- Besides the rights which were examined across the observed Member States, several other rights have been affected to a greater, or lesser extent, but not necessarily in all of the countries observed.
- The right to housing was affected in Belgium, Cyprus, Ireland and Spain in two principal ways: by the increase in foreclosures and evictions and by interventions into the allocation of social housing and rental allowances.
- The right to property was affected in Greece through massive increases of taxation and interventions in trade with State bonds. In Cyprus, property rights were affected by seizure of bank deposits exceeding EUR 100,000, the so-called 'deposit haircuts'. **In Italy, it is argued that the right to property has been affected by the State's failure to pay claims on time from public contracts with private entities.**
- Some of the rights at work have been affected in a number of observed Member States. Hence, the right to collective bargaining was interfered with in Cyprus, Greece, Ireland and Portugal, mostly by limiting the bargaining power of workers. In Portugal, the right to holidays has been brought into question.
- In Greece, freedom of information, more precisely the freedom of press has been put into question, in particular, after the closure of the national broadcaster.
- The right to social security was interfered with in Ireland and Portugal, mostly by interventions into the system of social benefits which needed to be cut as a matter of austerity.
- The impact of the crisis on the right to water has been raised in Ireland, given that one of the measures was the introduction of water meters as of 1 January 2015.
- Finally, the prohibition of discrimination was raised at two separate instances: within the context of hate speech in Greece and through restrictions of human rights of foreigners in Belgium. Besides these particular instances, an evaluation of the overall impact of all of the measures analysed in the study is made, given that many measures analysed in the present study have raised issues of their impact on vulnerable groups of people.

As noted in sections 2 and 3 of the present study, not all the Member States were affected by the crisis in the same manner. The effects depended on the pre-existing economic situation, the legal system and the level of protection provided for different rights. Due to those differences, in some Member States, certain rights were affected more than in others. The present section discusses those rights that were analysed in only one or a few countries covered by the present study, given that they appeared to have been affected more significantly in those Member States.

The rights observed are quite broad and the issues driving the problems noted are varied, thus, rather than providing a comparative analysis, the following sections will give an overview of different measures and their possible impacts in the Member States concerned.

10.1. Right to housing

The right to housing is recognised by Article 25 of the UDHR and by Article 11(1) of the ICESCR. **Furthermore, Article 34(3) of the EU Charter guarantees the 'right to social and housing assistance to ensure a decent existence for all those who lack sufficient resources'.**

The UNCESCR has underlined that the right to adequate housing should not be interpreted narrowly. Rather, it should be seen as the right to live somewhere in security, peace and dignity. The characteristics of the right to adequate housing are clarified mainly in the general comments on the right to adequate housing⁴⁸⁰ and on forced evictions⁴⁸¹. While it does not guarantee the right to own property, the right to housing contains a number of elements, including protection against forced evictions, security of tenure, and a requirement for **non-discriminatory access. As a minimum, it must 'provide more than four walls and a roof'**⁴⁸².

The CoE Commissioner noted that the right to housing was compromised by the response to the crisis⁴⁸³, while the FRA noted the increase in the occurrence of homelessness in the wake of the crisis⁴⁸⁴.

Interferences with the right to housing were studied in **Belgium, Cyprus, Ireland and Spain**. In Cyprus and Spain the right to housing is largely related to the disruptions in the housing market, the inability of homeowners to pay mortgages and the **foreclosures** that ensue. In Belgium, due to rising rent prices, the number of evictions has almost tripled in seven years. At the same time, in Belgium, Cyprus and Ireland, rental allowances or the availability of social housing are inadequate and insufficient to respond to the needs of people in the wake of the crisis.

10.1.1. Foreclosures and evictions

In the wake of the financial crisis of 2008, access to mortgages and property was clearly more difficult in Belgium, especially for low-income households. At the same time, the prices of rent were increasing by up to almost 15% per year. The increasing price of rent has led to a **serious increase in judicial evictions**. As reported by the Board of Housing, judicial evictions have almost tripled in Wallonia since 2005, from 5,529 to 14,234⁴⁸⁵.

However, the issue of foreclosures has become one of the burning issues in Spain. With the outbreak of the crisis and family insolvency, 415,117 foreclosure proceedings were initiated between 2008 and 2012. At the same time, the **total number of evictions was**

⁴⁸⁰ UNCESCR, General comment no. 4: The right to housing, UN Doc. E/1992/23, 1991, available at: <http://www1.umn.edu/humanrts/gencomm/epcomm4.htm>.

⁴⁸¹ UNCESCR, General comment no. 7: Forced evictions, and the right to adequate housing UN Doc. E/1998/22, 1997, available at: <http://www1.umn.edu/humanrts/gencomm/escgencom7.htm>.

⁴⁸² OHCHR, 'The Right to Adequate Housing', undated, p. 3, available at: http://www.ohchr.org/Documents/Publications/FS21_rev_1_Housing_en.pdf. See the same document for a detailed overview of UN standards applicable to the notion of adequate housing.

⁴⁸³ CoE Commissioner for Human Rights, Safeguarding human rights in times of economic crisis, issue paper, December 2013, available at: <https://wcd.coe.int/ViewDoc.jsp?id=2130915>.

⁴⁸⁴ FRA, 'The European Union as a Community of values: safeguarding fundamental rights in times of crisis', Focus report, 2012, p. 17, available at: http://fra.europa.eu/sites/default/files/fra-2013-safeguarding-fundamental-rights-in-crisis_en.pdf

⁴⁸⁵ 'The number of criminal deportations is increasing (*Le nombre d'expulsions judiciaires ne cesse d'augmenter*)', Press Release, available at: <http://info.catho.be/2014/04/03/le-nombre-dexpulsions-judiciaires-ne-cesse-daugmenter/#.VFJuy1LjiUk>.

244,278⁴⁸⁶. Nonetheless, as the Spanish legal system does not provide for consumer insolvency, should the sales of property not be sufficient to cover the entire amount of debt, the debtor has to continue paying the remainder of the debt, thus risking falling into life-long indebtedness. In response to this situation, legislation known as the Code of Good Banking Practice was adopted in 2012. Its aim was to restructure mortgage debts for those facing extraordinary difficulties, to meet payments and to make foreclosure proceedings more flexible. However, the Code is based on the voluntary adherence of the bank, and it has been seen as inadequate to deal with the social conflicts caused by the crisis in this regard. Further regulations were adopted, in 2012, to establish a two-year foreclosure suspension on the main residences of **particularly vulnerable groups**⁴⁸⁷. In May 2013, in response to the CJEU ruling⁴⁸⁸, measures were adopted, aimed at strengthening protection for mortgage debtors and restructuring debts and public rentals. The legislation also provides for cancellation of the remaining debt if, between 65% and 80% of the debt was already repaid. However, the reform was seen as inadequate for on-going foreclosures, and **certainly 'too late for homeowners whose foreclosure proceedings had already concluded'**⁴⁸⁹. Hence, regardless of those alleviating measures, the issue of foreclosures remains high on the agenda of the Spanish Government and citizens alike.

Similar to Spain, the right of the banks to **auction a defaulting borrower's first residence** has been at the centre of heated debates between the Cypriot Government and opposition parties for several months. Finally, a law was voted upon by the Parliament providing that the lender can sell the property for a minimum price, following one unsuccessful sale attempt. Given that the prices of property in Cyprus have significantly reduced in the last two years, as demand sank to an all-time low, this possibility is very likely⁴⁹⁰. The measure is quite new, and no information has been made available on its implementation. However, once implemented, it is likely to spark a social crisis of immense dimensions because enforcing these decisions is likely to be a challenge⁴⁹¹.

Similar problems have been recorded in Ireland, too, where **unsustainable mortgages** may be contributing to the homelessness problem⁴⁹² as over-indebted homeowners are unable to keep up with their payments⁴⁹³.

⁴⁸⁶ OESC, 'Emergencia Habitacional en el Estado español: La crisis de las ejecuciones hipotecarias y los desalojos desde una perspectiva de Derechos Humanos', 2013, p. 13, available at: http://observatoridesc.org/sites/default/files/2013-informe_habitatge-17dic.pdf. This alarming data generated a social movement, PAH, which has been discussed above, in section 9.2.7.

⁴⁸⁷ Vulnerable groups are for the purposes of this legislation defined according to both subjective terms – type of household: large family, with dependent persons, etc.- and objective terms – for instance, that the mortgage payment exceeds the 50% of the family's net income.

⁴⁸⁸ CJEU, *Juan Carlos Sánchez Morcillo & María del Carmen Abril García v Banco Bilbao Vizcaya Argentaria, SA*, Case C-169/14, Judgment of the Court (First Chamber) of 17 July 2014, available at: <http://curia.europa.eu/juris/document/document.jsf?doclang=EN&text=&pageIndex=0&part=1&mode=DOC&docId=155118&occ=first&cid=217499>.

⁴⁸⁹ Human Rights Watch, 'Spain: One Year Later, a Lot Left to Do on Housing, Debt Crisis', May 2014, available at: <http://www.hrw.org/news/2014/05/14/spain-one-year-later-lot-left-do-housing-debt-crisis>.

⁴⁹⁰ Global Property Guide (2014), 'Will Cyprus bounce back?', 17 May 2014, available at: <http://www.globalpropertyguide.com/Europe/Cyprus/Price-History>.

⁴⁹¹ The legal framework as regards this issue had still not been finalised at the time of writing.

⁴⁹² Smyth J., 'Bank rate rises risk increase in homelessness' 16 February 2011, Press Release, available at: <http://www.irishtimes.com/newspaper/ireland/2011/0216/1224289928493.html>.

⁴⁹³ Center for Economic and Social Rights, 'Mauled by the Celtic Tiger: Human rights in Ireland's economic meltdown: Rights in crisis briefing paper', February 2012, available at: <http://www.cesr.org/downloads/cesr.ireland.briefing.12.02.2012.pdf>.

10.1.2. Rental allowances and social housing

Given that rental allowances and social housing fall within the realm of social benefits, it is understood that any restrictions will exclusively affect the vulnerable groups – those who are dependent on social assistance.

In addition to the risk of losing their home to an auction, vulnerable groups in Cyprus, such as **asylum seekers and the elderly**, are faced with new austerity measures regarding the rental allowance paid to them. As already elaborated in section 7.2.4, in the case of the elderly, the new pension regime has, according to the estimates of their trade unions, rendered pensioners 30% worse off than before the crisis⁴⁹⁴. This has inevitably affected their ability to pay rent. In the case of asylum seekers, according to new regulations introduced in 2013, rental allowance is now paid under restricted conditions, and in an amount which is inadequate to secure appropriate housing⁴⁹⁵.

The Irish social housing budget was cut by 36% in 2011 and by another 26% in 2012. At the same time, with the loss of jobs and turbulence in the labour market, it is not surprising that the number of households on waiting lists for social housing increased by 75% between 2008 and 2011, i.e. from 56,000 to 98,000⁴⁹⁶. Moreover, it is estimated that in 2011, approximately 5,000 people were **homeless** in Ireland compared to 3,157 people in 2008⁴⁹⁷. The continued rise in rents, particularly in the last 12 months, is seen as contributing to the problem⁴⁹⁸, while rent supplements, having been reduced by 20% to 25%⁴⁹⁹, are becoming increasingly inadequate with the severe budget cuts⁵⁰⁰.

Certain vulnerable groups have been adversely affected in Ireland. **Travellers** have experienced 85% spending cuts on housing since 2008⁵⁰¹. Moreover, resource allocations for **asylum seeker** accommodation were reduced by 13% in 2011⁵⁰². In 2008, 36% of all **single-parent households** were on the waiting list for social housing and one fifth of all people who relied on a rent supplement to meet their rental costs were single parents⁵⁰³.

⁴⁹⁴ Consultation with the Secretary-General of the trade union of pensioners E.KY.SY., September 2014.

⁴⁹⁵ Even after the drop in rentals following the crisis, it is still rare to find an apartment for under EUR 300 per month.

⁴⁹⁶ Center for Economic and Social Rights, 'Mauled by the Celtic Tiger: Human rights in Ireland's economic meltdown: Rights in crisis briefing paper', February 2012, available at: http://www.cesr.org/downloads/cesr_ireland_briefing_12.02.2012.pdf; Department of the Environment, Community and Local Government, 'Minister Penrose announces publication of Social Housing Needs Assessment 2011', 19 September 2011, available at: http://www.environ.ie/en/DevelopmentHousing/Housing/SocialHousingSupport/LocalAuthorityHousing/News/MainBody,27882_en.htm.

⁴⁹⁷ Focus Ireland, 'Estimating the number of people who are homeless in Ireland', November 2011, available at: <http://www.focusireland.ie/images/articles/Homeless%20Numbers.pdf>; Simon Community, 'Homelessness', undated, available at: <http://www.simon.ie/Homelessness/Homelessness.aspx>.

⁴⁹⁸ Conclusion based on stakeholder consultation (Director of Research and Corporate, Housing), September 2014.

⁴⁹⁹ Threshold, 'Threshold pre-budget submission 2013', September 2012, available at: http://www.threshold.ie/download/pdf/threshold_prebudget_submission_2013.pdf.

⁵⁰⁰ Threshold, 'Threshold pre-budget submission 2013', September 2012, available at: http://www.threshold.ie/download/pdf/threshold_prebudget_submission_2013.pdf.

⁵⁰¹ Smyth J., 'Irish travellers bear brunt of austerity', 29 April 2013, Press Release, available at: <http://www.ft.com/intl/cms/s/0/c963d0c2-b0e6-11e2-80f9-00144feabdc0.html#axzz3DmFPGiEir>.

⁵⁰² Center for Economic and Social Rights, 'Mauled by the Celtic Tiger: Human rights in Ireland's economic meltdown: Rights in crisis briefing paper', February 2012, available at: http://www.cesr.org/downloads/cesr_ireland_briefing_12.02.2012.pdf; Reception and Integration Agency, 'Parliamentary Questions Relating to RIA', 2 November 2011, available at: http://www.ria.gov.ie/en/RIA/Pages/PQ_32464_November_2011/.

⁵⁰³ United Nations General Assembly, 'Report of the independent expert on the question of human rights and extreme poverty, Sepúlveda Carmona M.,: Mission to Ireland', Human Rights Council Seventeenth Session, 17 May 2011, available at: http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.34.Add.2_en.pdf.

The capital assistance scheme, which used to house **people with disabilities**, was also reduced from EUR 145 million in 2010, to EUR 50 million in 2012⁵⁰⁴.

Access to social housing is becoming more and more difficult in Belgium, with more than 40,000 households on the waiting list for public housing in Brussels and more than 30,000 in Wallonia. Waiting times to get public housing vary - from seven to eight years for studios to 12 years for three-bedroom apartments⁵⁰⁵. The rental allowance is, however, granted only after a certain time spent on the waiting list.

In order to **improve access to adequate housing**, and more generally, reduce the cost of housing, a number of measures were introduced in Belgium. The Brussels Capital Region adopted a new Housing Code. The reform included a series of changes aimed at reinforcing the fight against unhealthy housing and unoccupied dwellings. In Flanders, rental assistance was improved by decreasing the necessary waiting time from five to four years. Also, landlords are protected against non-payment of rent, by means of a **rental guarantee fund**, while, at the same time, an eviction prevention fund has been created⁵⁰⁶. In May 2013, the Walloon Government introduced a new bonus for the improvement of caravans for long-term housing, as well as an increased premium granted to persons moving into a decent dwelling⁵⁰⁷. In a further attempt to ensure affordable living, in 2014, the VAT on electricity for private persons was reduced from 21% to 6%⁵⁰⁸ in the whole of Belgium, while in Flanders, new procedures are being put in place against cutting water supply, in case of non-payment, aimed at protecting vulnerable groups.

As already noted, the right to housing does not guarantee the right to own property. However, it would appear that, as a follow up to foreclosure and eviction procedures, little has been done to ensure a safety net for the people affected. It is somewhat self-evident that increasing access to housing reduces homelessness, while the opposite is true when the level of protection is reduced. However, austerity measures in some Member States, such as Cyprus and Ireland, have caused the already scarce expenditure on social housing, to be reduced. At the same time, in Belgium, an additional investment is being made towards expanding protection and providing broader access to housing for those in need.

10.2. Right to property

At the international level, the right to property was first recognised in Article 17 of the UDHR. However, having been controversial at the time when the two Covenants were drafted, the right to property is not included in either the ICCPR or ICESCR. As a consequence, the Human Rights Committee, acting on the basis of the Optional Protocol to ICCPR, is not able to examine alleged violations of the right to property. Nevertheless, the

⁵⁰⁴ Disability Federation of Ireland, 'Disability Federation of Ireland Pre-Budget Submission 2014', undated, available at: <http://www.disability-federation.ie/index.php?uniqueID=10710>.

⁵⁰⁵ Vessièrre, G. 'Housing crisis: the reign of the imagination (*Crise du logement : le règne de l'imagination*)', 23 January 2014, Press Release, available at: <http://www.lesoir.be/409935/article/economie/immo/2014-01-23/crise-du-logement-regne-l-imagination>.

⁵⁰⁶ European Commission, 'Belgium: National Reform Programme 2014', 25 April 2014, available at: http://ec.europa.eu/europe2020/pdf/csr2014/nrp2014_belgium_en.pdf.

⁵⁰⁷ Wallon Government website, 'Permanent habitat map: adoption of mapping the sites concerned (*Plan habitat permanent : adoption de la cartographie des sites concernés*)', undated, available at: <http://henry.wallonie.be/plan-habitat-permanent-adoption-de-la-cartographie-des-sites-concern-s-0>.

⁵⁰⁸ Belgian Federal Government, 'Recovery Strategy: Supporting the purchasing power of citizens, strengthen the competitiveness of our economy, create more quality jobs (*Stratégie de Relance : Soutenir le pouvoir d'achat des citoyens, Renforcer la compétitivité de notre économie, Créer plus d'emplois de qualité*)' 18 July 2012, available at: <http://www.groups.be/doc/notecadre.pdf>.

Human Rights Committee recognises – on the basis of Article 26 of the ICCPR, the right to non-discrimination in the matter of property⁵⁰⁹. Moreover, the right to protection of certain forms of property has been included in the category of cultural rights within the ICESCR.

Due to similar controversial reasons, the right to own or possess property was not included in the original text of the ECHR. However, this omission was corrected by the first **amendments to the instrument, and the right to peaceful enjoyment of one's possessions**, including the right to property, has since been protected by Article 1 of Protocol No. 1 to the ECHR⁵¹⁰.

The EU Charter protects the right to property in its Article 17, which guarantees everyone **'the right to own, use, dispose and bequeath his or her lawfully acquired possessions'** while **deprivation of property is possible only in the public interest, and 'subject to fair compensation being paid in good time for their loss'**.

For the purposes of the present study, the right to property was analysed in Greece, Cyprus and Italy. Whether caused by, or imposed as, a response to the economic crisis, certain measures were introduced which were said to directly, or indirectly, interfere with the right to property of the persons affected. In Greece, the interventions into the right to property were mostly made by means of **increased taxation burdens**. In that regard, the ECtHR was called to examine the situation of tax increases on certain benefits in some States, and indeed found a violation of the right to property where the taxation burden on the individual concerned was overwhelming⁵¹¹. In Cyprus, the interferences with the right to property were taking place in relation to the **'haircut of deposits' – seizure of the savings of private individuals** in Cypriot banks. In fact, the resolution of this issue is currently pending before the CJEU⁵¹². In Italy, State institutions are failing to respect their contractual obligations towards suppliers, **postponing payments from public contracts** beyond reasonable time.

10.2.1. Increasing taxation burden in Greece

According to paragraph 2 of Article 1 of Protocol No. 1 to the ECHR, States are free to take the measures they deem necessary to control the use of property in accordance with the general interest, to secure the payment of taxes, or other contributions and penalties. As noted above, however, in their exercise of this discretionary power, States are not entrusted with unlimited powers to interfere with the possessions of individuals when enforcing taxation legislation.

In order to address budget deficits, the Greek Government imposed a number of tax **burdens on Greek citizens in the course of the crisis, i.e. special levies and 'emergency taxes' were imposed on pensions, the self-employed and liberal professions, properties and**

⁵⁰⁹ EU Network of Independent Experts on Fundamental Rights, 'Commentary of the Charter of Fundamental Rights of the European Union', 2006, p. 163, available at: http://ec.europa.eu/justice/fundamental-rights/files/networkcommentaryfinal_en.pdf.

⁵¹⁰ For more info on drafting history of the right to property in the ECHR, and on different interpretations of the notion of 'possessions', see e.g. Sermet L., 'The European Convention on Human Rights and property rights', Council of Europe Publishing, revised edition 1999, available at: <http://www.echr.coe.int/LibraryDocs/DG2/HRFILES/DG2-EN-HRFILES-11%281998%29.pdf>.

⁵¹¹ ECtHR, R.Sz. v. Hungary, (no. 41838/11), 2 July 2013.

⁵¹² Case T-277/13, Marquis Energy v Council, action brought on 15 May 2013, OJ 2013/C 226/20, not yet reported.

large incomes, while the structure of personal income tax changed three times⁵¹³. Indirect taxation also increased: the standard rate of VAT was raised from 19% to 23% in two steps between March and May 2010; base and reduced rates were also increased in two steps, i.e. from 4.5% to 5.5% and from 9% to 13%; excise duties on alcohol, tobacco, luxury items, and especially heating oil, also went up⁵¹⁴.

In 2009, the Greek Government imposed a **special one-off levy** on individuals who declared an income of over EUR 60,000 in 2008. Furthermore, in 2011, a **special solidarity tax** (*ειδική εισφορά αλληλεγγύης*) was imposed on natural persons whose net income exceeded EUR 12,000 in the fiscal years 2010 to 2014, with certain exceptions for vulnerable groups of citizens, e.g. the long-term unemployed. In 2014, the imposition of the social solidarity tax was extended for the years 2015 and 2016, however, with the relevant rates reduced by 30%.

An **extraordinary property tax** was introduced, in 2011, in favour of the Greek State on residential or commercial property connected to the electricity network. The tax is computed by taking into consideration the size of the property receiving electricity, the age of that property and the zone price of its location and is collected with the electricity bills. Failure to pay the tax would result in the interruption of the power supply by the power providers. In the proceedings evaluating the constitutionality of this tax, the Council of State held that the interruption of the electricity supply to those not paying the extraordinary property tax was unconstitutional, even though the tax itself was not in violation of the constitutional guarantees⁵¹⁵.

In 2013, another property tax referred to as '**uniform tax on real estate**' (ENFIA) was introduced. As of 1 January 2014, this replaced the previously applicable property tax regime. ENFIA comprises of a '**main tax**' and a '**supplementary tax**'. The main tax is computed on an asset-per-asset basis, depending on the location, surface, use, age, floor and number of facades of the building. Furthermore, separate formulas apply to buildings, plots and agricultural land. The supplementary tax is computed on the basis of a progressive tax scale for individuals and flat rates for legal persons. These progressive tax rates for citizens apply only to property with values exceeding EUR 300,000, and then range between 0.1% and 1% of the value of the property exceeding the threshold. For legal persons, there is no tax-free bracket and the applicable tax rate is 0.5%. Having been broadly criticised by opposition, as well as citizens, the legislation has been amended. Following amendments, the budgetary projections of the expected revenue decreased⁵¹⁶. In order to cover this loss, real estate – the objective value of which exceeds EUR 300,000, was made subject to both the ENFIA and the Annual Property Tax on Real Estate (FAP) in 2014. Furthermore, the 2014 FAP was computed on the basis of the objective values of real estate in 2007 which, in most cases, were much higher than current market values. The

⁵¹³ FIDH & Hellenic League for Human Rights Report, 'Downgrading rights: the cost of austerity in Greece', December 2014, p. 11, available at: <https://www.fidh.org/IMG/pdf/grece646a2014.pdf>.

⁵¹⁴ C. Leventi, M. Matsaganis, 'Distributional Implications of the Crisis in Greece in 2009 – 2012', EUROMOD Working Paper 14/13, p. 10, available at: <https://www.iser.essex.ac.uk/research/publications/working-papers/euromod/em14-13.pdf>.

⁵¹⁵ The Court considered that this constituted an unconstitutional interference in the contractual relationship between the consumer and the supplier of electricity and in the right of the former to freely enjoy his/her rights under the relevant contract. The Plenary of the Council of State held that the interruption of electricity supply to the taxpayer because he/she failed to pay the extraordinary property tax, which is unrelated to his/her obligations under the contract with the electricity supplier, violates the principle of proportionality. Some members of the Court also expressed the view that this measure violates not only the constitutionally protected right to economic freedom but also the constitutional protection of human value, because the interruption of electricity results in the loss of a good which is indispensable for decent living.

⁵¹⁶ Alpha Bank, Economic Weekly, 'Greek Economy (*Ελληνική Οικονομία*)', p. 4, available at: http://www.alpha.gr/files/deltia_typou/weekly08082014.pdf.

FAP could be 4-10 times the value of the ENFIA tax, leading to the depreciation of property above EUR 300,000⁵¹⁷. In his report, the Governor of the Bank of Greece indicated that, in the fourth quarter of 2012, the fall in real estate prices was 27.9%⁵¹⁸ and in 2013, it was 33.4%⁵¹⁹. The numerous taxation measures have aggravated the recession in the real estate market and have significantly reduced demand⁵²⁰. The distortion caused by the existence of objective values, which in many cases considerably exceed the market values, **e.g. for large properties in 'expensive' areas and depressed areas of central Athens, and leads to artificial over-taxation of real estate**⁵²¹.

In this respect, it is worth noting that the Council of State⁵²² has held that there is an unlawful failure on the part of the administration to adjust the objective values of real estate property every two years – since the last time such an adjustment took place was in 2007. Nonetheless, even though it would normally have to retroactively annul this failure, **after balancing the citizens' interests with the intense public interest in avoiding a sudden loss of tax revenues under the current financial conditions**, the Council of State decided to give a six-month period to the Ministry of Finance to make the relevant adjustments.

10.2.2. The Greek Private Sector Involvement and small bondholders

The Private Sector Involvement (PSI) scheme was developed in 2011, in Greece, to cover **the State's financing needs until mid-2014**, by means of involving private sector investment in State bonds. Under the initial design of the PSI, private sector holders of Greek Government Bonds (GGBs) were invited to voluntarily exchange their holdings of existing GGBs for new bonds with longer maturities and lower coupons. This would incur a loss of about 21% on average in Net Present Value (NPV) terms, for private bond-holders. In view of its implementation, Greek banks recorded related provisions in their June 2011 financial statements. The exchange of Greek Government bonds under the PSI contributed to the deterioration of the already difficult financial situation of private bondholders and insurance funds⁵²³. The large losses that **insurance funds** suffered due to the exchange of bonds, coincided with the dramatic effects of the downturn in the flow of their revenues. More specifically, the insurance funds had placed, upon decisions of their administrations, EUR 7.4 billion in bonds and EUR 15 billion in the Common Capital of the Bank of Greece⁵²⁴. Before the PSI, a total of about EUR 21 billion was placed in bonds. The losses in the reserves of insurance funds, because of the PSI, amounted to 53% in nominal values and

⁵¹⁷ Alpha Bank, Economic Weekly, 'Greek Economy (Ελληνική Οικονομία)', p. 4, available at: http://www.alpha.gr/files/deltia_typou/weekly08082014.pdf.

⁵¹⁸ Bank of Greece, 'Report of the Governor for 2012 (Εκθεση του διοικητή για το έτος 2012)', p. 70, available at: <http://www.bankofgreece.gr/BogEkdoseis/ekthdkth2012.pdf>.

⁵¹⁹ Bank of Greece, 'Report of the Governor for 2013 (Εκθεση του διοικητή για το έτος 2012)', p. 69, available at: <http://www.bankofgreece.gr/BogEkdoseis/ekthdkth2013.pdf>.

⁵²⁰ Bank of Greece, 'Report of the Governor for 2013 (Εκθεση του διοικητή για το έτος 2012)', p. 71, available at: <http://www.bankofgreece.gr/BogEkdoseis/ekthdkth2013.pdf>.

⁵²¹ Bank of Greece, 'Report of the Governor for 2013 (Εκθεση του διοικητή για το έτος 2012)', p. 71, available at: <http://www.bankofgreece.gr/BogEkdoseis/ekthdkth2013.pdf>.

⁵²² Council of State, Decision no. 4003/2014 of 10 October 2014.

⁵²³ Greek General Confederation of Labour (GSEE), 'The Greek Economy and Employment (ελληνική οικονομία και η απασχόληση)', 2012, p. 287, available at: <http://www.inegsee.gr/wp-content/uploads/2014/02/files/EKTHESH%2014.pdf>.

⁵²⁴ Greek General Confederation of Labour (GSEE), 'The Greek Economy and Employment (ελληνική οικονομία και η απασχόληση)', 2012, p. 287, available at: <http://www.inegsee.gr/wp-content/uploads/2014/02/files/EKTHESH%2014.pdf>.

above 70% in real values, taking into account the trading price of the new bonds – maturing during 2023- 2042, on the secondary market⁵²⁵.

Furthermore, around 15,000 small **bondholders** were also significantly affected by their participation in the Greek PSI⁵²⁶. Approximately 10,000 bondholders (individuals, companies and funds) filed over 150 challenges against the Greek PSI before the Greek Courts⁵²⁷. Nonetheless, the Plenary Greek Council of State held that the PSI was constitutional and imperative for reasons of public interest, and in particular, in order to avoid a State default⁵²⁸.

As described above, the changes in the bond market affected holders disproportionately. While it can hardly be claimed that bonds, as an investment which usually comes with a risk, can represent an unalienable right. In all cases, investment in State bonds has traditionally been seen as a low-risk investment, although, notably, the Greek investors lost up to 70% of their investment, which indeed represents a loss of property.

10.2.3. Cypriot 'haircut of deposits'

As a condition for receiving the EUR 10 billion bail-out package from the EU's bail-out mechanism, in March 2013, Cyprus was forced to subsidise part of its bail-out. This was agreed to be raised by levying shareholders, bondholders, and depositors with more than EUR 100,000 in their accounts, and used as **equity to recapitalise the country's two major banks**.

The 'bail-in' concept suggested by the Troika lenders was embraced by the new Government amidst heated protests. Initially, the proposal was that all bank deposits in all banks, including secure deposits, would be levied with a percentage of the amount of the deposit, in order to raise the EUR 7 billion required by the Troika, but the Government failed to secure a majority in parliament to pass this measure and submitted a revised bill for confiscating **deposits only in excess of EUR 100,000 and only in the country's two major banks**. The two banks affected by the 'haircut', namely the Cyprus Popular Bank (which was

⁵²⁵ Greek General Confederation of Labour (GSEE), 'The Greek Economy and Employment (ελληνική οικονομία και η απασχόληση)', 2012, p. 287, available at: <http://www.inegsee.gr/wp-content/uploads/2014/02/files/EKTHESH%2014.pdf>.

⁵²⁶ Skai.gr, 'Bakoyanni criticises government for delays in the supporting small bondholders (Ολιγωρία στη στήριξη για μικρο-ομολογιούχους καταγγέλλει η Μπακογιάννη)', 29 October 2014, available at: <http://www.skai.gr/news/politics/article/268543/oliguria-sti-stirixi-gia-mikro-omologiouhous-kataggellei-i-bakogianni/>.

⁵²⁷ To Vima, 'Council of State: trial on the challenge of small bondholders against the haircut (ΣΤΕ: Εκδικάζεται η αγωγή των μικρο - ομολογιούχων για το «κούρεμα»)', 22 March 2013, available at: <http://www.tovima.gr/society/article/?aid=503998>.

⁵²⁸ More specifically, in its judgment 1116/2014 the Council of State held that even though bondholders suffered a particularly serious loss, still it was not inappropriate, unnecessary or disproportionate in order to be considered as violating the Greek Constitution [including Article 17(1) (right to property); Article 25(1) (protection of legitimate expectations and legal certainty in financial transactions, as specific expressions of the principle of the rule of law, expressly enshrined in Article 25(1) of the Constitution); Article 4 (principle of equality)] or Article 1 of the First Additional Protocol of the ECHR. Amongst others, the Court held that the PSI was not beyond what was necessary and/or appropriate in order to achieve the reduction of public debt and thus avoid a default which could have unpredictable social and economic consequences and which would pose a serious risk in the enjoyment of the rights of all natural and legal persons who have invested in the Greek debt. The Council of State noted that Law 4050/2012, which provides for the exchange of bonds issued or guaranteed by the Greek government with new titles, was established in accordance with international commercial practice. Furthermore, the Court rejected the claims of the bondholders that the PSI violated the principle of equality, as its provisions were generally applicable, or that the PSI resulted in the expropriation and reduction of their property, as the requirement of fair balance was preserved. Finally, it is worth noting that the Council of State held that the conditions for submitting a request for a preliminary ruling to the Court of Justice of the EU were not met in this case.

shut down completely) and the Bank of Cyprus, which together, accounted for 80% percent of the banking sector in Cyprus.

Following agreement in the Eurogroup regarding Cyprus, in March 2013, all Cypriot banks remained closed for several days, leaving their clients without cash. When the banks reopened, the Central Bank of Cyprus issued orders which were renewed and updated weekly, imposing a number of restrictions on, *inter alia*, cash withdrawals, i.e. a maximum of EUR 300 per day, and transfers of money abroad⁵²⁹. Furthermore, the export of money outside Cyprus is only restriction-free only EUR 5,000 per person, per month⁵³⁰.

The 'haircut' had devastating effects not only on individual businesses and households, but also on the economy as a whole, as consumer trust in Cypriot banks was lost by both foreign investors and Cypriots alike, rendering bank deposits an unsound form of either funding or investment.

10.2.4. Delays in payments in Italy

Delay in payments of debt may constitute a violation of the right to property, as the ECtHR has repeatedly found in its case-law. A claim can constitute a possession within the meaning of the Article 1 of Protocol No. 1 to the ECHR, if it is sufficiently established to be enforceable⁵³¹. Nonetheless, delays in payment in Italy would hardly qualify for these requirements, given that usually, in order to qualify, the claim needs to be recognised by a domestic court or equivalent authority.

In 2014, Italian public authorities took 165 days, i.e. 37 more days than in 2009, to pay their invoices. While peak delays occurred prior to the period covered by this study, average payment times in Italy remain significantly longer than the EU average. Enterprises with public contracts for the procurement of works report being paid 7 months late, with peak delays up to 2 years⁵³². Such delays are hardly compatible with the EU law requirement that public authorities must pay their invoices within 30 days, or 60 days under certain conditions. Following the submission of a number of complaints, on 18 June 2014, the Commission announced the start of an infringement procedure against Italy⁵³³.

It is difficult to measure the total amount of debts of commercial transactions accumulated by the Italian public authorities. A rough estimate by the Bank of Italy places it at about

⁵²⁹ The restrictions change from time to time. For an indication of the restrictions applicable at the time of writing, see Central Bank of Cyprus, The restrictive measures on transactions, undated, available at: http://www.centralbank.gov.cy/nqcontent.cfm?a_id=12583&lang=en.

⁵³⁰ For any money in excess of this amount, permits must be granted provided a special committee is satisfied that the money is intended for the maintenance of students studying abroad (at a ceiling of EUR 5,000 per quarter), payment of salaries of employees studying abroad or payments for transactions within one's usual professional activity (again ceilings apply). Thus a person wishing to export money in order to, for example, make an investment outside Cyprus can only do so at the rate of EUR 5,000 per month. The restrictions in the movement of capital have created additional insecurity to consumers who feel their money is trapped in Cyprus risking confiscation at the next 'bail-in' deal. Central Bank of Cyprus, The restrictive measures on transactions, undated, available at: http://www.centralbank.gov.cy/nqcontent.cfm?a_id=12583&lang=en.

⁵³¹ See e.g. ECtHR, *Burdov v. Russia*, no. 59498/00, judgment of 7 May 2002, available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-60449>, and *Burdov v. Russia (2)*, no. 33504/04, judgment of 15 January 2009, available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-90671>.

⁵³² Associazione Nazionale Costruttori Edili (ANCE), *Attuazione della nuova direttiva europea sui ritardi di pagamento in Italia: Relazione dell'Associazione Nazionale dei Costruttori Edili al Vice-Presidente della Commissione Europea sull'attuazione della Direttiva 2011/7/UE del 16 febbraio 2011 relativa alla lotta contro i ritardi di pagamento delle transazioni commerciali*, 03 February 2014, available at: <http://www.astrid.eu/I-CREDITI-/Studi--ric/Relazione-Ance-al-Vice-Presidente-Tajani-Febbraio-2014.pdf>.

⁵³³ European Commission, Press release: Late payments: Commission seeks clarifications from Italy and Slovakia, 18 June 14, available at: http://europa.eu/rapid/press-release_IP-14-689_en.htm.

EUR 90 billion at the end of 2011, i.e. equivalent to nearly **6% of Italy's GDP** – half of which was deemed to be collectable⁵³⁴.

A number of measures were taken to tackle the issue of public debt. To that end, public authorities were required to identify creditors and verify if funds were available for payments. In the case of insufficient funds, creditors should be paid in chronological order, starting with the oldest debts⁵³⁵. Furthermore, provision was made to allow debts to be **settled, at the creditor's request, through the assignment of State bonds to be certified** or guaranteed by the State and transferred to banks and financial institutions⁵³⁶. An online platform was created to facilitate the certification process⁵³⁷.

The measures taken in order to tackle the problem of public authorities' failures to pay their debts in a timely manner, possibly constitute 'the greatest measures to restart the economy taken in recent decades'⁵³⁸. However, despite budgetary allocations, payments did not always take place according to schedule. Furthermore, the macroeconomic impact of the **payment of debts by public authorities was considered as 'certainly positive', even though its actual significance is difficult to estimate.**

The allocation of responsibility to officials who incur debts for ensuring compliance with public finance rules and budget allocations, has led authorities, particularly at local level, to introduce organisational measures to contain the creation of new debts. However, as a side effect, authorities appear to have reduced the number of calls for tender and contracts signed after the publication of the calls⁵³⁹.

Regarding the measures allowing the certification of credits to public authorities, a certain delay in implementation was registered, while there are claims that public authorities do not acknowledge the certificates as a means of payment⁵⁴⁰.

Some commentators noted that the measures taken deal with past debts, but do not adequately address their causes. In this way, they are not capable of preventing the same problems from arising in the future (or continuing to arise in the present)⁵⁴¹.

10.3. Rights at work

As already discussed in sections 6.1 and 6.2, there is a difference between the right to work and the rights at work. While the former relates to the right to earn a living by being engaged in meaningful employment **of one's own choosing, the latter are the rights**

⁵³⁴ Banca d'Italia, Bollettino Economico Numero 2, 2014, available at: http://www.bancaditalia.it/pubblicazioni/bollettino-economico/2014-2/boleco_2_2014.pdf.

⁵³⁵ Altalex, Debiti Pa: il decreto per i pagamenti alle imprese, 10 June 2013, available at: <http://www.altalex.com/index.php?idnot=62370>.

⁵³⁶ See Camera dei Deputati, Servizio Studi, Il decreto-legge per il pagamento dei debiti della Pubblica Amministrazione, 7 May 2013, available at: <http://documenti.camera.it/Leg17/Dossier/Testi/NOTST001.htm>.

⁵³⁷ [Piattaforma per la certificazione dei crediti](#).

⁵³⁸ Hamaui R. and Bordignon M., 'Debiti della Pa, il diavolo sta nei dettagli', 3 April 2013, available at: <http://www.lavoce.info/archives/8264/debiti-della-pa-il-diavolo-sta-nei-dettagli/>.

⁵³⁹ Associazione Nazionale Costruttori Edili (ANCE), Attuazione della nuova direttiva europea sui ritardi di pagamento in Italia: Relazione dell'Associazione Nazionale dei Costruttori Edili al Vice-Presidente della Commissione Europea sull'attuazione della Direttiva 2011/7/UE del 16 febbraio 2011 relativa alla lotta contro i ritardi di pagamento delle transazioni commerciali, 3 February 2014, available at: <http://www.astrid.eu/1-CREDITI-/Studi--ric/Relazione-Ance-al-Vice-Presidente-Tajani-Febbraio-2014.pdf>.

⁵⁴⁰ Fubini F. (Repubblica.it), 'Debiti dello Stato, le banche frenano', 30 March 14, available at: http://www.repubblica.it/economia/2014/03/30/news/debiti_pa_rimborsi_banche-82309134.

⁵⁴¹ Pisaurò G., 'Debiti della Pa: che succederà in futuro?', 9 April 2013, available at: <http://www.lavoce.info/archives/8425/debiti-delle-amministrazioni-che-succederà-in-futuro/>.

guaranteed to those already employed. For the purposes of the present study, the right to work was determined to be the right to find and keep employment, as well as the right to earn a liveable wage. While some issues, also dealt with in section 6, might be argued to belong to the family of the rights at work, e.g. working hours or working conditions, they have also been included in the discussion within the context of the right to work, given their interrelatedness to the measures described therein. This is a methodological tool used in the present study, without prejudice to the concept and definition of the right to work, or any of the rights at work.

Some of the national measures observed in the present study have affected the rights at work. In Cyprus, Greece, Ireland and Portugal, the **right to collective bargaining** appeared to have been affected by austerity measures. In Portugal, some additional interventions were also made into the **right to holidays**.

10.3.1. Collective bargaining

The right to collective bargaining is safeguarded by a number of ILO Conventions⁵⁴². It is also protected by Article 28 of the EU Charter, which establishes the right of workers to negotiate and conclude collective agreements at appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action. This right is also protected by Article 6 of the ESC.

Austerity measures followed one another in Cyprus, affecting the right to work of both public and private sector employees, with little consultation, and no consensus with the **workers' trade unions**. Some of the austerity measures adopted without consultation or collective bargaining are the following: freezing and cutting the salaries of public sector employees; the process of privatising State-owned enterprises; unilateral imposition of the programme of minimum guaranteed income; introducing working hours of shops during weekends; suspending the implementation of the new NHS.

As an **alleviation measure**, during 2012, Cyprus enacted a couple of laws aimed at strengthening the framework of the unionisation of workers, modernising labour relations and countering possible employer abuses in times of crisis. The combined effect of the two laws was to create a comprehensive framework safeguarding the substance and procedure **for the recognition of workers' representatives in collective bargaining processes**. Nonetheless, these instruments did little towards empowering trade unions in the collective **agreement process, since a series of measures affecting workers' rights were adopted in their aftermath and without consultations with trade unions**⁵⁴³.

Hence, despite declared commitment to improve the negotiating power of workers in Cyprus, through such actions, their exercise of collective bargaining weakened, rather than

⁵⁴² E.g. Convention on the Freedom of Association and Protection of the Right to Organise, 1948 (No. 87) and Convention on the Right to Organise and Collective Bargaining, 1951 (No. 98).

⁵⁴³ See statements and press releases of PASYDY, the trade union of state employees: PASYDY, 'Uprooting of trade unionism (*Εκθμελίωση του Συνδικαλισμού και του Κοινωνικού Διαλόγου*)', 7 December 2012, available at: <http://www.pasydy.org/announcement.aspx?id=58>; PASYDY, 'We refuse to accept', 14 March 2012, available at: <http://www.pasydy.org/announcements.aspx?topicId=4>. This measure was contested in Court by public sector employees. However the court rejected the arguments of the employees, upholding the cuts and freezes. Interestingly, the Court took a very different approach when it came to deciding on the legality of extending these **austerity measures to the salaries of judges. In the case of the judges' salaries, the Court found the austerity measures to be unlawful because judges needed to maintain their independence to carry out their judicial functions impartially, raising an issue as to whether it was legitimate for judges to issue judgments about their own salaries.**

strengthened. The failure to involve them in social dialogue and engage them in collective bargaining has brought into question some aspects of the right to work, as well as some rights at work.

In contrast to the intended positive measures of the Cypriot Government, the Portuguese Parliament adopted legislation relative to collective agreements, further **weakening the negotiation position of workers**. The amendments adopted aimed to result in reducing the period of validity of collective agreements, enabling their suspension while effectively covering fewer workers. Moreover, with no regard to this legislation, the effects of collective agreements have often been **suspended** by the legislation that implemented austerity measures – whenever their provisions were incompatible with those measures⁵⁴⁴.

In Ireland, a previous Government committed to allow **'voice over actors' and freelance journalists** to exercise their right to engage in collective bargaining. However, this commitment was vetoed by Troika, on the basis that, according to settled EU case law, self-employed individuals were undertakings⁵⁴⁵. This has caused these professions to effectively remain outside the remit of the protections provided by collective bargaining.

Greece introduced legislation allowing workers' representatives, **other than trade unions, to negotiate collective agreements** at company level, as long as they represent at least three-fifths of the undertaking's workforce. As a matter of fact, the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) issued various⁵⁴⁶ observations concerning the application of several ILO Conventions in Greece, including the Convention on the Right to Organise and Collective Bargaining Convention (No.98)⁵⁴⁷. The CEACR warned that these measures could have a severely detrimental impact on the foundation of collective bargaining in the country, in relation to the measures imposed in Greece.

10.3.2. Right to holidays

The right to holidays is protected by a number of ILO conventions and European instruments. The ESC guarantees the right to public holidays and annual holiday with pay

⁵⁴⁴ Hence, for example, Article 75, paragraph 7, of the State Budget Law for 2014, which establishes that the legal regime imposed by the norm has imperative nature and it shall prevail over any instrument of collective bargaining and any other norms; it cannot be modified or revoked by them in any way. This was challenged before the Constitutional Court and the petitioners claimed that the measure violated the right to collective bargaining, because it makes it impossible, even for the future. The Court, however, in the Decision no. 413/2014 of 30 May 2014 saw it as a justified restriction to the right of collective bargaining, due to ensure public interests and the economic viability of the companies affected.

⁵⁴⁵ Kerr A., 'Social Rights in Crisis in the Eurozone. Work Rights in Ireland', 2014, EUI Working Paper LAW 2014/05, available at: <http://cadmus.eui.eu/bitstream/handle/1814/31247/LAW%20WP%202014%2005%20Social%20Rights%20final%202242014.pdf?sequence=1>.

⁵⁴⁶ An advanced search on NORMLEX for the period between 2008 and 2014 showed that CEACR issued 52 Observations concerning Greece.

⁵⁴⁷ Observations adopted 2010, published 100th ILC session (2011) available at: http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:2698934,102658,Greece,2010, Observations adopted 2011, published 101st ILC session (2012) available at: http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:3086195,102658,Greece,2011, Observations adopted 2012, published 102nd ILC session (2013) available at: http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:3149782,102658,Greece,2012, Observations adopted 2013, published 103rd ILC session (2014) available at: http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:3149782,102658,Greece,2013.

in Article 2. At EU level, the EU Charter foresees an annual period of paid leave in Article 31 on fair and just working conditions. The Working Time Directive⁵⁴⁸ further requires Member States to guarantee at least four weeks of paid holidays per year.

The reforms to the Portuguese Labour Code have reduced the number of public holidays. Namely, four public holiday days were removed from the calendar. Furthermore, the number of days of leave was set at 22 working days, and the prior possibility of up to three bonus leave days should the worker not miss work, has completely disappeared. These measures were challenged before the Constitutional Court, but were upheld⁵⁴⁹. As a consequence of this measure, workers in Portugal now work **up to seven more days a year**, without additional pay.

10.4. Freedom of information

The right to transparency, and to be informed in a timely accessible and relevant manner, as long as the information does not impede the obligation of data protection, has been singled-out as being in danger throughout the response to the crisis⁵⁵⁰. The right to freedom of information is found in Article 19 of the ICCPR, Article 10 of the ECHR and Article 11 of the EU Charter, which guarantees the right to receive and impart information. International bodies have recognised that freedom of information is a fundamental human right and that effective laws are needed to secure freedom of information. The freedom to receive information is the other aspect of the freedom of expression. In this spirit, the ECtHR found a violation in a case which involved the publication of information in relation **to austerity measures that the 'right to be informed about and participate in public affairs** implies a duty of States to conduct their economic and social policy in transparent ways and allow for public participation in its design, implementation and monitoring.⁵⁵¹ **This is why** this right intersects with the **right to political participation** throughout the crisis response.

Interferences with the freedom of information in relation to the media were registered in Greece, where despite the constitutional guarantees for the freedom of expression and the freedom of the press, the domestic policy concerning the media has been subject to strong politicisation. This has substantially affected the way in which the Member State has tried to balance the economic interests of the sector against the values of freedom of expression **and freedom of information, the media's social responsibility, and media plurality**⁵⁵².

⁵⁴⁸ Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time, available at: http://eur-lex.europa.eu/legal-content/EN/ALL/;ELX_SESSIONID=ZTKYJ2KRKv99LsbrOXqGrpdlcGpkGtjJ1hfmvdQTP6LjV3TcPMmv1-1617897587?uri=CELEX:32003L0088.

⁵⁴⁹ The petitioners argued that they violated the constitutional principle of the protection of trust, and the constitutional rights to paid holidays and to a fair balance between professional and personal life, because, in practice, they imposed seven additional days of work per year, without additional pay. The Constitutional Court, however, did not consider them unconstitutional. In what concerns the elimination of public holidays, the Court ruled that workers do not have an individual right to public holidays, which is a mechanism to pursue public interest, paying tribute to relevant social, political or religious events. Therefore, their elimination, justified by the legislator as a way to improve productivity was considered in accordance with the Constitution. As for the withdrawal of the three bonus days of paid leave, whenever the worker had not missed work during the previous year, the Court explained that this was only a mechanism to fight absenteeism, and that its elimination, also justified by the need to enhance productivity by raising the number of working days was entirely within the freedom of decision of the legislator, and was not an unconstitutional violation of the right to holidays. Constitutional Court of Portugal, Decision no. 602/2013.

⁵⁵⁰ Constitutional Court of Portugal, Decision no. 602/2013, p. 20.

⁵⁵¹ Constitutional Court of Portugal, Decision no. 602/2013, p. 39.

⁵⁵² ELIAMEP, 'Case study report Does media policy promote media freedom and independence? The case of Greece', p. 6, available at: <http://www.mediadem.eliamep.gr/wp-content/uploads/2012/01/Greece.pdf>.

According to the NGO 'Reporters without Borders', freedom of information is repeatedly flouted in Greece, which has fallen more than 68 positions in the press freedom index since 2008⁵⁵³. In 2014, Greece had the 99th place in the press freedom index⁵⁵⁴, being second to last amongst the EU Member States – the last one being Bulgaria⁵⁵⁵. According to the Reporters without Borders, the economic crisis hit the Greek media hard, e.g. those financing the national media moved their investments into more profitable sectors, leading to massive lay-offs of journalists⁵⁵⁶. Furthermore, reporters are also frequently the victims of physical violence by both the police and demonstrators who accuse them of colluding with the Government⁵⁵⁷.

In June 2013, in order to reduce public spending, and under the pressure of the Troika to eliminate 2,000 public sector jobs, the Government closed the State-owned national broadcaster, ERT, consisting of four TV stations and five radio stations. This led to the dismissal of 2,700 employees⁵⁵⁸. The shutdown of Hellenic Broadcasting Corporation/Greek Radio-Television (ERT) particularly affected citizens in rural areas and those close to the borders, where Greek private broadcasters and other Greek media are often unavailable⁵⁵⁹. The decision to close the ERT was subject to intense criticism, especially regarding the process followed by the **Government which, according to the FIDH, 'was paved with irregularities, in having escaped parliamentary scrutiny and lacking transparency and accountability'**⁵⁶⁰. The Government announced the creation of a new State broadcaster, NERIT, which officially started operating in May 2014.

The Government's decision to shut down the ERT was challenged before the Greek courts; the **Plenary of the Council of State in its decision 1901/2014**⁵⁶¹ held that the closure of ERT was 'constitutional, legal and not contrary to EU law' – with a majority of 15 in favour and 10 against.

10.5. The right to social security

Article 34 of the EU Charter and Article 12 of the ESC guarantee the right to social security. Interventions into the right to social security were recorded in Ireland and Portugal.

In Ireland, the right to social security was negatively affected through cuts to child benefit, unemployment benefit and maternity leave benefit, mainly by reducing the amounts for each of them.

⁵⁵³ Reporters without Borders, 'World Press Freedom Index 2014', p. 26, available at: http://rsf.org/index2014/data/index2014_en.pdf.

⁵⁵⁴ Reporters without Borders, 'World Press Freedom Index 2014', p. 8, available at: http://rsf.org/index2014/data/index2014_en.pdf.

⁵⁵⁵ Reporters without Borders, 'World Press Freedom Index 2014', p. 31, available at: http://rsf.org/index2014/data/index2014_en.pdf.

⁵⁵⁶ Reporters without Borders, 'World Press Freedom Index 2014', p. 26, available at: http://rsf.org/index2014/data/index2014_en.pdf.

⁵⁵⁷ Reporters without Borders, 'World Press Freedom Index 2014', p. 26, available at: http://rsf.org/index2014/data/index2014_en.pdf.

⁵⁵⁸ Freedom House, 'Freedom of the Press 2014', available: <https://www.freedomhouse.org/report/freedom-press/2014/greece>.

⁵⁵⁹ Freedom House, 'Freedom of the Press 2014', available: <https://www.freedomhouse.org/report/freedom-press/2014/greece>.

⁵⁶⁰ Fédération internationale des ligues des droits de l'homme and Hellenic League for Human Rights Report, 'Downgrading rights: the cost of austerity in Greece', p. 52, available at: <https://www.fidh.org/IMG/pdf/grece646a2014.pdf>

⁵⁶¹ Council of State (Plenary) judgment 1901/2014.

In Portugal, one of the main austerity measures consisted of **freezing of almost all social and pension benefits**. Since 2010, the country has witnessed a clear retreat in policies aimed at combating poverty and social precariousness, which has been justified by the necessity to contain public deficit⁵⁶². In addition to the freeze of benefits, the eligibility requirements of the programme were made more stringent⁵⁶³. Family allowances have also been reduced and half a million children have lost the right to receive it under the new eligibility criteria, during the last five years⁵⁶⁴.

According to the MoU⁵⁶⁵, the **unemployment insurance** system was also reformed. The maximum duration of unemployment insurance benefits was reduced, and a maximum benefit was introduced, no matter how high the previous income and related contributions to social security were. A declining profile of benefits was established after six months of unemployment. With the application of these new rules, the number of unemployed without any kind of social support has been rising⁵⁶⁶. From the 860,100 people who were **unemployed in Portugal, according to the State's** National Institute for Statistics, only 398,742 benefited from any kind of unemployment benefit, i.e. around 46.4%⁵⁶⁷.

10.6. The right to water

The right to water has not been explicitly recognised by any of the existing human rights instruments. It has been noted, however, by the UNGA as a necessary precondition for the realisation of human rights⁵⁶⁸. This has been recently reemphasised in the Communication of the Commission on the right to water⁵⁶⁹. The right to water has been identified as a possible issue in Ireland. However it should be noted that, in relation to the UNGA resolution, the Irish Government abstained from this vote, meaning they did not formally acknowledge water as a human right⁵⁷⁰.

⁵⁶² See UNICEF, Portuguese Committee, 'As Crianças e a Crise em Portugal - Vozes de Crianças, Políticas Públicas e Indicadores Sociais', 2013, available at: <http://www.unicef.pt/as-criancas-e-a-crise-em-portugal/files/Relatorio-Unicef.pdf>.

⁵⁶³ A very simple example illustrates the scope of these changes. In early 2010, a couple with two young children was eligible for Social Insertion Income if they had a monthly income of up to EUR 569. In August 2012, the same couple would only be eligible if it had an income under EUR 398. There are two immediate consequences of these changes: the loss of the benefit by a significant percentage of previous beneficiaries; and a reduction in the amounts receivable for those families who remain in the programme.

⁵⁶⁴ See UNICEF, Portuguese Committee, 'As Crianças e a Crise em Portugal - Vozes de Crianças, Políticas Públicas e Indicadores Sociais', 2013, available at: <http://www.unicef.pt/as-criancas-e-a-crise-em-portugal/files/Relatorio-Unicef.pdf>.

⁵⁶⁵ Portugal: Memorandum of Understanding on Specific Economic Policy Conditionality, 3 May 2011, available at: http://www.actuaries.org/lyon2013/papers/PBSS_BoschPrinceps_VilaltadeMiguel_LopezMorill_RochCasellas.pdf.

⁵⁶⁶ Villalobos, L., 'The amount of unemployed people without any allowance is to rise from January (*Peso de desempregados sem qualquer tipo de subsídio está a subir desde Janeiro*)', 8 August 2014, Press Release, available at: <http://www.publico.pt/economia/noticia/peso-de-desempregados-sem-qualquer-tipo-de-subsidio-esta-a-subir-desde-janeiro-1665756>.

⁵⁶⁷ UNICEF, Portuguese Committee, 'As Crianças e a Crise em Portugal - Vozes de Crianças, Políticas Públicas e Indicadores Sociais', 2013, available at: <http://www.unicef.pt/as-criancas-e-a-crise-em-portugal/files/Relatorio-Unicef.pdf>.

⁵⁶⁸ UN General Assembly, Human Right to Water, Resolution, UN Doc. A/RES/64/292, 2010, available at: http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/64/292.

⁵⁶⁹ See also the 2014 Communication of the Commission on the right to water, available at: http://ec.europa.eu/transparency/com_r2w_en.pdf.

⁵⁷⁰ TASC, 'Water charges: an equality-proofed approach', February 2012, available at: http://www.environ.ie/en/Environment/Water/WaterSectorReform/Submissions/Organisations/FileDownload.3183_3_en.pdf.

As a condition of the MoU⁵⁷¹, new fees for domestic water use have been introduced in Ireland for homes that are connected to a public water supply, or to public wastewater services⁵⁷². The new system is being brought into effect from January 2015. The measures introduced impose 30m³ per year of free basic water, after which EUR 4.88/m³ including taxes will be charged⁵⁷³. As an alleviation measure, **a new water support payment** was introduced to assist with water costs for people on lower incomes and on social welfare. However, this may not be enough and these water charges may impede such people from accessing water⁵⁷⁴.

10.7. Vulnerable groups – discrimination

The prohibition of discrimination and its counterpart, the right to equality, are guaranteed implicitly, or explicitly, by almost all human rights instruments.

Thus, Article 21 of the EU Charter, Articles 2 and 7 of the UDHR, Articles 2 and 26 of the ICCPR, Article 2 of the ICESCR, Article 14 of the ECHR and Protocol 14 thereto, Preamble of the ESC and Articles E and 20 of the RESC, provide explicit prohibition of discrimination. Many other instruments are directed towards combatting specific forms of discrimination. The UN Convention for the Elimination of All Forms of Racial Discrimination, the CEDAW, the CRPD, the CRC and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, were adopted at the international level. Regionally, the CoE has adopted instruments towards the protection of women, children born out of wedlock, farmers, migrant workers or refugees. The EU has also been proactive in providing protection against discrimination and has adopted a number of directives providing protection in specific fields, notably employment, and against discrimination based on gender. Furthermore, the FRA and the European Institute for Gender Equality (EIGE) are entrusted with specific competencies which mainly focus on seeking equality of treatment for all Europeans.

Discrimination is a very broad concept and is, as such, also recognised in the international instruments. Thus, the first universal instrument to make the prohibition of discrimination an international obligation was the ICCPR, which in its Article 26 provides that:

'All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status'.

The European Parliament, itself, is largely concerned with the issues of discrimination, mostly through its LIBE and FEMM committees, and frequently reminds Member States as well as the EU, of their obligations towards ensuring equality. Thus, in February 2014, the

⁵⁷¹ Ireland: Memorandum of Understanding on Specific Economic Policy Conditionality (Eighth Update), April 2013, available at: <http://www.finance.gov.ie/sites/default/files/mousearchmarch2013.pdf>.

⁵⁷² Enetenglish, 'Austerity has eroded human rights, Council of Europe study says', 4 December 2013, Press Release, available at: <http://www.enetenglish.gr/?i=news.en.article&id=1656>.

⁵⁷³ Commission for Energy Regulation, 'Guide to the CER's Decision in Irish Water Charges Plan for Domestic Customers', 30 September 2014, available at: <http://www.cer.ie/docs/000979/CER14745.2%20Guide%20to%20the%20CER's%20Decision%20on%20Irish%20Water's%20Water%20Charges%20Plan%20for%20Domestic%20Customers.pdf>.

⁵⁷⁴ Society of St. Vincent de Paul, 'Water proposals have serious implications for low-income households, as alleviation measures are not targeted', 31 July 2014, Press Release, available at: <http://www.svp.ie/News-Media/Press-Releases/Water-charge-per-litre-is-one-of-the-highest-in-Eu.aspx>.

Parliament adopted the EU Roadmap against homophobia and discrimination on grounds of sexual orientation and gender identity in which it called on the Member States to consolidate the existing EU legal framework by working to adopt the proposed directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation, including by clarifying the scope and associated costs of its provisions⁵⁷⁵.

As the present study has shown, austerity measures often disproportionately affected disadvantaged groups. While the continuing crisis is a real threat, it must not be used as an excuse, nor can it serve as a tool for discriminating against people. The Parliament has already warned about racial and ethnic discrimination in employment, housing, education, health, access to goods and services and expressed concern:

'about the rise of political parties which are openly racist, xenophobic, Islamophobic and anti-Semitic, owing to an economic and social crisis which is encouraging a frantic search for scapegoats, and whose violent practices should be condemned; is also concerned at the adoption of repressive measures against the homeless in the context of the current crisis⁵⁷⁶'.

There are two types of issues to be observed when analysing the impact of austerity measures on equality. The first group of issues are those which were singled out as issues of particular concern in two Member States. In Belgium, that is the restriction of the rights of foreigners, while in Greece, it is hate crimes and hate speech. Other groups of issues, transpired from the comparative analysis in the present study where, with respect to nearly every right, measures or their impacts (or both) disproportionately affecting certain groups of people were identified. The present section aims to describe both of these groups of issues.

10.7.1. Restriction of human rights of foreigners

In the context of budgetary consolidation in Belgium, control over expenditure was intensified and the impact was clearly felt in the asylum and migration field. Many reforms and measures have contributed to the restriction of human rights of foreigners. Equally, recent reforms on migration have strongly affected the fundamental right to family life and have had an impact on medical residence permits⁵⁷⁷. The authorities have also taken measures affecting specific categories of foreigners such as European citizens, people staying on the grounds of work, and people who have lodged an appeal against a decision refusing or withdrawing the right of residence. These measures restrict access to various social services and, at least indirectly, threaten their right to lead a life worthy of human dignity⁵⁷⁸.

⁵⁷⁵ European Parliament resolution of 4 February 2014 on the EU Roadmap against homophobia and discrimination on grounds of sexual orientation and gender identity, 2013/2183(INI), 4 February 2014, Article 4(B)(i), available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2014-0062+0+DOC+XML+V0//EN>.

⁵⁷⁶ European Parliament, Resolution on the situation of fundamental rights in the European Union (2011-2012), 2011/22069(INI), 12 December 2012, available at: <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2012-0500&language=EN>.

⁵⁷⁷ European Migration Network (EMN), 'Annual Report on Asylum and Migration Policy in Belgium', 2013, available at: http://www.emnbelgium.be/sites/default/files/publications/be_policy_report_2013_on_migration_and_asylum_emn_0.pdf.

⁵⁷⁸ EMN, 'Annual Report on Asylum and Migration Policy in Belgium', 2013, available at: http://www.emnbelgium.be/sites/default/files/publications/be_policy_report_2013_on_migration_and_asylum_emn_0.pdf.

10.7.2. Hate crimes and hate speech

In the last few years, Greece has witnessed a steep increase in incidents of racist violence, discrimination, intolerance and extremism. This can be attributed to the combination of two interlinked factors: (a) the social and political impact of the acute economic crisis that the country has been undergoing since 2008, including the significant rise in youth unemployment; and, (b) the significant number of third-country nationals, mostly asylum seekers and irregular migrants, who live under conditions of severe deprivation in the streets of Athens⁵⁷⁹. However, even though the intensity and frequency of racist violence and intolerance has recently grown, reports of the National Commission for Human Rights, the Council of Europe Commission against Racism and Intolerance, as well as the FRA, have highlighted persistence, in the course of many years, of racism and intolerance phenomena and the lack of effective measures to tackle them⁵⁸⁰.

Between 1 January 2012 and 30 April 2013, the Greek Ombudsman reported on the basis of NGO records and its own records: 281 incidents of hate crimes, 253 of which took place in 2012. In 47 instances, an alleged involvement of the national police, the local police and the port authorities (*σώματα ασφαλείας*) was reported⁵⁸¹. Incidents of racist violence increased dramatically as of May 2012. While between January and April 2012 there were 7.7 reported incidents per month (31 in total), between May and December 2012 the average reported incidents of racist violence per month rose to 27.75 (222 in total)⁵⁸². According to the Greek Ombudsman, the dramatic increase in the number of complaints of racist attacks and the escalating intensity of the violence used reflects, amongst others, the socio-political developments which allowed the right wing Golden Dawn Party to gain, for the first time in history, 6.92% of the votes and 18 seats in the Greek Parliament.⁵⁸³

A recent FRA report examining minorities as victims of crimes, notes that the overall victimisation rate of Roma in Greece is 54% (the EU average is 32%)⁵⁸⁴. In addition, Roma and Albanians were victims of certain crimes multiple times more often than the majority population⁵⁸⁵.

10.7.3. Equality in austerity

As noted above, there is a general impression that austerity measures, or at least those that were examined within the present study, have disproportionately affected certain

⁵⁷⁹ FRA 'Racism, discrimination, intolerance and extremism: Learning from experiences in Greece and Hungary', 2013, p. 9, available at: http://fra.europa.eu/sites/default/files/fra-2013-thematic-situation-report-3_en_1.pdf.

⁵⁸⁰ FRA 'Racism, discrimination, intolerance and extremism: Learning from experiences in Greece and Hungary', 2013, p. 10, available at: http://fra.europa.eu/sites/default/files/fra-2013-thematic-situation-report-3_en_1.pdf.

⁵⁸¹ Greek Ombudsman 'The phenomenon of racist violence in Greece and how it is combated (*Ειδική έκθεση: Το Φαινόμενο της Ρατσιστικής Βίας στην Ελλάδα και η αντιμετώπιση του*)', September 2013, p. 6, available at: <http://www.synigoros.gr/resources/docs/eidikiekthesiratsistikivia.pdf>.

⁵⁸² Greek Ombudsman 'The phenomenon of racist violence in Greece and how it is combated (*Ειδική έκθεση: Το Φαινόμενο της Ρατσιστικής Βίας στην Ελλάδα και η αντιμετώπιση του*)', September 2013, p. 7, available at: <http://www.synigoros.gr/resources/docs/eidikiekthesiratsistikivia.pdf>.

⁵⁸³ Greek Ombudsman 'The phenomenon of racist violence in Greece and how it is combated (*Ειδική έκθεση: Το Φαινόμενο της Ρατσιστικής Βίας στην Ελλάδα και η αντιμετώπιση του*)', September 2013, p. 8, available at: <http://www.synigoros.gr/resources/docs/eidikiekthesiratsistikivia.pdf>.

⁵⁸⁴ FRA Report 'Minorities as victims of Crime', 2012, p. 8, available at: http://fra.europa.eu/sites/default/files/fra-2012-eu-midis-dif6_0.pdf.

⁵⁸⁵ In particular, the Roma face high likelihood of having their houses burgled (29% as opposed to EU average 10%). Furthermore, 26% of Roma in Greece considered that they were victims of serious harassment, assault or threats in the examined period on a racist motive (as opposed to EU average 18%)⁵⁸⁵. With respect to theft, 21.1% of Roma and 6.7% of Albanians experienced theft in 2012, contrary to 3.5% of the majority population. Ibid, 15

groups of the population. It needs to be noted that all of those groups were already considered to be disadvantaged before, and unrelated to, the crisis. However, with austerity measures put in place, their situation has worsened, at least in some aspects.

It may be seen from the outset that there are some groups that are affected more often than others. From the preceding sections, one common denominator can be identified – **foreigners**. Migrants, regardless of the reason for their stay in a country, or the particular status they may have, are usually easy to identify and, in the current political climate in EU Member States, they are certainly subject to discriminatory treatment. Apart from the two instances described above, foreigners have been disproportionately affected by measures introduced in relation to the enjoyment of the right to education in Cyprus, where foreign children now have less opportunity to receive support towards learning the Greek language. Furthermore, an important group of foreigners, the undocumented migrants, are being restricted access to healthcare in Cyprus, Greece and Spain. Migrants also face difficulties in accessing employment in Ireland.

Furthermore, people with disabilities have been affected significantly by austerity measures. Firstly, **children with disabilities** have suffered negative consequences of austerity measures in Belgium, Greece, Ireland and Portugal, where their right to inclusive education was brought into question. It is important to emphasise that the EU is bound by the CRPD which ensures inclusive education for all children. **Adults with disabilities** are facing additional difficulties in access to healthcare and jobs. The families of people with disabilities are being exposed by association⁵⁸⁶ and are, thus, in danger of suffering more consequences in the enjoyment of certain rights, notably, pensions.

Women are also more likely to be affected by negative impacts of austerity measures, as has been noted by the UN special rapporteur⁵⁸⁷. The fiscal consolidation packages had impaired the functioning of the gender equality infrastructure in several Member States⁵⁸⁸. In the present study, it may be noted that women have been affected more than men in accessing healthcare, being engaged in full-time employment, and in relation to the enjoyment of pension. They may also be seen as being affected disproportionately by all of the measures particularly affecting single parent families, notably, the right to housing – given that, more often than not, single parent families are headed by women⁵⁸⁹.

⁵⁸⁶ Discrimination, or other forms of disadvantage by association essentially mean that people who do not hold the discriminating characteristic are being put into disadvantageous position based on their relationship with a person who does hold such a characteristic. The CJEU has introduced this concept into the EU legal order in the case of *Coleman v. Attridge Law and Steve Law*, C-303/06, Judgment of the Court (Grand Chamber) of 17 July 2008, available at: <http://curia.europa.eu/juris/liste.jsf?language=en&num=C-303/06>. For a broader discussion on discrimination by association see also Karagiorgi C., 'The concept of discrimination by association and its application in the EU Member States', European Commission, European Anti-Discrimination Law Review, Issue 18, July 2014, pp. 25-37, available at: <http://ec.europa.eu/justice/discrimination/files/adlr-18-2014-final.pdf>.

⁵⁸⁷ See e.g. Report of the OHCHR on the impact of the global economic and financial crises to the realisation of all human rights and on possible actions to alleviate it, UN Doc. A/HRC/13/38, §§ 14-17 elaborating on the impacts of the financial crisis on women, children and migrants, available at: <http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-38.pdf>; Report of the Independent Expert on the question of human rights and extreme poverty, Magdalena Sepulveda Carmona, UN Doc. A/HRC/17/34, §§ 32-33, March 2011, outlining a human rights framework for responding to the financial crisis, available at: http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.34.Add.2_en.pdf.

⁵⁸⁸ Bettio F., Corsi M., D'Ippoliti C., Lyberaki A., Samek Lodovici M. and Verashchagina A., 'The impact of the economic crisis on the situation of women and men and on gender equality policies: Synthesis report', European Commission, DG Justice, December 2012, available at: <http://eurogender.eige.europa.eu/sites/default/files/Impact%20of%20the%20economic%20crisis.pdf>.

⁵⁸⁹ Ruggeri K. and Bird C.E., 'Single parents and employment in Europe', Short statistical report, European Commission, April 2014, p. 2, available at: http://ec.europa.eu/justice/gender-equality/files/documents/140502_gender_equality_workforce_ssr3_en.pdf.

Different age groups have also been identified to be in unequal positions. While **young people** are more concerned with the right to work and access to healthcare, the same issues are relevant also for older people. However, **older people** are almost exclusively affected by the entirety of the reforms introduced into the pension systems – even though these reforms are eventually of concern to all since most people will have to rely on that same system at a certain age. Furthermore, older people are also affected in their access to healthcare and the enjoyment of the right to work.

Probably by default, **people with low-income and at risk of poverty** are likely to be more affected by certain measures than some other groups, given that they are the group that relies most on social security.

Furthermore, some groups are characteristically in danger in certain countries, due to their specific situation. Hence, **Travellers** are only subject to disproportionate treatment in Ireland because they do not represent a significant minority in any other observed Member State. However, those in which the presence of **Roma** people is noteworthy are often subject to unjustified differential treatment.

There are other instances of differential and unequal treatment of certain other groups, although, their occurrence appears to be isolated within certain contexts, e.g. access to pension of Cypriot retired repatriates.

11. INTERNATIONAL AND EU MECHANISMS FOR MONITORING RESPECT FOR FUNDAMENTAL RIGHTS

KEY FINDINGS

- Monitoring mechanisms and their proper functioning are of key importance for the rule of law at national level and international level.
- The various impacts of austerity measures have been commented upon by many institutions, including the UN Independent expert on the effects of foreign debt and related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, the CRC and the CEDAW Committees, the CoE Committee of Ministers, the ECSR, the CoE Commissioner and the CJEU.
- In many instances, monitoring mechanisms found interferences and non-compliance of various measures, introduced within the framework of austerity, with international human rights law or EU law.

11.1. The importance of monitoring mechanisms

The rule of law is the driver of modern democracy. In fact, '[p]luralistic democracy and the rule of law are essential for ensuring respect for all human rights and fundamental freedoms, the development of human contacts and the resolution of other issues⁵⁹⁰'. The rule of law is not merely a formal legality, but justice based on the recognition and full acceptance of the supreme value of human personality and guaranteed by institutions providing a **framework for its fullest expression**, and that **'democracy is an inherent element of the rule of law'**⁵⁹¹. Against this background, it is not difficult to conclude that **'without a strong rule of law at the national level, attempts to strengthen the rule of law at the international level are significantly hampered'**⁵⁹².

Nonetheless, international law functions differently to national law. In that regard, it is often said that States are the:

'subjects of international law [...]. But it must be understood that the state is not just a subject of international law; it is additionally both a source and an official of international law. International law regulates a small community of a few hundred members, compared to the millions that domestic law regulates. And it is horizontal law, rather than vertical law, that depends largely on treaties between states or the emergence of customs among states for the generation of new norms'⁵⁹³.

⁵⁹⁰ OSCE, Document of the Copenhagen Meeting of the Conference on the Human dimension of the CSCE, 1990, available at: <http://www.osce.org/odihr/elections/14304>.

⁵⁹¹ OSCE, Document of the Copenhagen Meeting of the Conference on the Human dimension of the CSCE, 1990, available at: <http://www.osce.org/odihr/elections/14304>.

⁵⁹² Nollkaemper A., 'The Nexus Between the National and the International Rule of Law', in Botero J.C., Janse R., Muller S. and Pratt C., eds., *Innovations in the Rule of Law – A Compilation of Concise Essays*, 2012, available at: http://worldjusticeproject.org/sites/default/files/the_nexus_between_the_national_and_the_international_rule_of_law_nollkaemper.pdf.

⁵⁹³ Waldron J., 'The Rule of International Law', *Harvard Journal of Law and Public Policy*, Vol 30. No 1, 2008, p. 23, and the sources contained therein, available at: http://www.law.harvard.edu/students/orgs/jlpp/Vol30_No1_Waldrononline.pdf. Emphases added in the original document.

In times of crisis, Member States changed their attitude towards international law, and were noted to have shifted the balance between their social responsibility towards people and fiscal responsibility towards their creditors, in favour of the latter⁵⁹⁴. The application of exclusively financial solutions to the economic and social crisis could eventually lead to the collapse of internal demand and the social functioning of the State, condemning the country to years of economic recession and social unrest⁵⁹⁵.

In such circumstances, it is of great importance that the monitoring mechanisms provided by various international human rights instruments function with the utmost efficiency and effectiveness in order to ensure that the guarantees from each of those instruments are duly respected.

The monitoring mechanisms herein observed are those provided through the UN treaty **bodies, the ECtHR and the ECSR. However, the interventions of 'softer' mechanisms, such as the UN special procedures, or the CoE Commissioner, have also been reflected on.**

This section therefore assesses how the international monitoring mechanisms have approached the issues of crisis, austerity and human rights in an attempt to safeguard the rule of international law.

11.2. International response on the impact of austerity measures on fundamental rights

When considering the link between austerity measures and their impact on fundamental rights, it is worth differentiating between those:

- which may directly interfere with rights e.g. through cut in pensions or by removing a previously existing social security benefit;
- which have indirect impacts through, for example, cutting the funding of monitoring bodies such as equality commissioners; reducing funding for interpretation in judicial proceedings; NGOs promoting fundamental rights;
- measures taken to address protests against austerity measures which may violate or interfere with fundamental rights, e.g. limitations on the freedom to associate. These measures, even though not austerity measures per se, are closely linked to their introduction.

Austerity measures which reduce spending for critical social welfare programmes during times of crisis can undercut human rights norms and threaten the most vulnerable members of society⁵⁹⁶. Thus, from the outset, the attention of international human rights institutions was drawn to the possible negative consequences of austerity on fundamental rights.

⁵⁹⁴ CoE Committee of Ministers, Resolution CM/ResCSS(2013)21 on the application of the European Code of Social Security by Greece (Period from 1 July 2011 to 30 June 2012), available at: <https://wcd.coe.int/ViewDoc.jsp?id=2115379&Site=CM>.

⁵⁹⁵ CoE Committee of Ministers, Resolution CM/ResCSS(2013)21 on the application of the European Code of Social Security by Greece (Period from 1 July 2011 to 30 June 2012), available at: <https://wcd.coe.int/ViewDoc.jsp?id=2115379&Site=CM>.

⁵⁹⁶ UN Office of the High Commissioner on Human Rights, Report on austerity measures and economic and social rights, 2013, p. 7. See also The Guardian, Magdalena Sepulveda: Austerity is devastating for the world's poorest, February 2013, available at: <http://www.theguardian.com/society/2013/feb/26/magdalena-sepulveda-austerity-devastating-worlds-poorest>.

The practical division of rights between civil and political on the one hand, and economic, social and cultural on the other, is particularly visible in the wake of the crisis when most discussions have focused on **economic and social rights**. For example, in discussing the impact of the crisis on human rights, the UN human rights mechanisms tended to focus on economic and social rights noting that, due to the crisis, there has been a decline in access to economic and social rights, such as the right to work, social welfare programmes, affordable food, housing, water and other basic necessities⁵⁹⁷. Hence, even the cultural rights seemed to have been left aside⁵⁹⁸.

However, with time, the impact of crisis on other rights also became visible. Thus, for example, in policy documents **cultural rights** have mostly been mentioned as a part of the 'package' with economic and social rights. It has, however, been noted that by 2010, in some crisis-affected countries, the culture budgets fell almost by half. At the same time, in other countries, even though budget spending remained the same, it became increasingly difficult to secure sponsorship from private companies⁵⁹⁹. Furthermore, despite existing policies, such as the European agenda for culture⁶⁰⁰, access to funding for cultural and creative industries remains difficult⁶⁰¹. Moreover, the interrelatedness of the effects of the crisis on the right to culture and other rights, for example, the right to work, have been emphasised, and their impacts assessed⁶⁰².

The **UN Secretary General** stressed the need to protect **all human rights** in times of crisis⁶⁰³, while the European Parliament emphasised that beyond social and economic rights, civil and political rights were at stake during the crisis, highlighting that the **'economic and financial crisis is a threat to human rights as a whole, including civil and political rights'**⁶⁰⁴.

⁵⁹⁷ See e.g. UN OHCHR, Human rights and the financial crisis, available at: <http://www.ohchr.org/EN/Issues/Development/Pages/PromotingHRbasedfinancialregulationmacroeconomicpolicies.aspx>. See also, UNHRC, Report of the OHCHR on the impact of the global economic and financial crises to the realisation of all human rights and on possible actions to alleviate it, UN Doc. A/HRC/13/38, February 2010, available at: <http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-38.pdf>; and UN-HRC, Resolution on the impact of the global economic and financial crises on the universal realization and effective enjoyment of human rights, UN Doc. A/HRC/S-10/1, February 2009, available at: http://www2.ohchr.org/english/bodies/hrcouncil/docs/10special_session/A-HRC-S-10-2.pdf.

⁵⁹⁸ See e.g. European Parliament resolution on the situation of fundamental rights in the European Union (2010-2011), 2011/2069(INI), 12 December 2012, emphasising only the social and economic rights as 'the essential elements of the Charter', which should thus be 'given prominent recognition in any analysis of the situation of fundamental rights in the Union'. Available at: <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2012-0500&language=EN>.

⁵⁹⁹ SICA – Dutch Centre for International Cultural Activities, 'The economic crisis and the prospects for art and culture in Europe', October 2010, available at: http://www.culturalpolicies.net/web/files/83/en/en_crisis_and_prospects_for_art_and_culture_in_europe_oct2010.pdf.

⁶⁰⁰ European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a European agenda for culture in a globalizing world, COM/2007/0242 final, May 2007, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52007DC0242&from=EN>.

⁶⁰¹ European Commission, Commission Staff Working document: Analysis of the consultation launched by the Green Paper on "Unlocking the potential of cultural and creative industries", SEC(2011) 399 final, March 2011, available at: http://www.europarl.europa.eu/RegData/docs_autres_institutions/commission_europeenne/sec/2011/0399/COM_SEC%282011%290399_EN.pdf.

⁶⁰² Inkei P., The effects of the economic crisis on culture, September 2010, available at: http://www.coe.int/t/dg4/cultureheritage/cwe/Effects_Inkei_EN.pdf.

⁶⁰³ UN Secretary General, Contribution of the United Nations system as a whole to the advancement of the business and human rights agenda and the dissemination and implementation of the Guiding Principles on Business and Human Rights, UN Doc. A/HRC/21/21, July 2012, available at: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-21_en.pdf.

⁶⁰⁴ European Parliament, Report on the impact of the financial and economic crisis on human rights, 2012/2136(INI), March 2013, available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A7-2013-0057+0+DOC+XML+V0//EN>.

Globally, **many UN bodies** have taken the crisis into consideration when dealing with various human rights topics. As early as May 2007, while the crisis was yet to gain momentum, the **UN Committee on Economic, Social and Cultural Rights (UN ESCR Committee)** emphasised that 'even in times of severe resource constraints, States parties [to the ICESCR] must protect the most disadvantaged and marginalised members or groups of society by adopting relatively low-cost targeted programmes⁶⁰⁵'. The Committee also noted that, in order to be able to attribute its failure to meet obligations to a lack of **available resources**, the State 'must demonstrate that every effort has been made to use all resources that are at its disposal in an effort to satisfy, as a matter of priority, those core obligations⁶⁰⁶'.

In 2008, the UN convened the **Interactive Panel on the Global Financial Crisis**, during which concerns over the human cost of the crisis were voiced, emphasising that a market that socialises risk and privatises profit was no longer acceptable⁶⁰⁷. About the same time, the UN Secretary General convened a meeting of the Chief Executive Board for Coordination (CEB) – an ad hoc body which meets biannually and consists of: 29 executive heads of the UN and its Funds and Programmes; specialised UN agencies, including the World Bank and IMF; the World Trade Organisation; the International Atomic Energy Agency. The meeting was to emphasise the importance of respect to international norms concerning economic, social, environmental and human rights in times of financial crisis⁶⁰⁸.

Shortly thereafter, the **President of the UN General Assembly (UNGA)** invited selected international experts and all of the UN Member States to an Interactive Panel of the UNGA on the Global Financial Crisis, which resulted in the appointment of the Commission of Experts on Reforms of the International Monetary and Financial System⁶⁰⁹.

With the spread of the crisis globally, the threat that austerity measures posed to rights became more obvious and, thus, called for more direct intervention. Thus, in February 2009, the **UN Human Rights Council (UNHRC)** convened a special session to discuss the impact of the crisis on the universal realisation and effective enjoyment of human rights. The UNHRC called for the impacts of the crisis to be examined on the realisation and effective enjoyment of human rights⁶¹⁰, and adopted a resolution in which it recognised that 'economic and financial crises are global in scope and require global-concerted solutions, developed in partnership by the international community, with a view to preventing and alleviating any of their impacts on the universal realisation and effective enjoyment of human rights and fundamental freedoms⁶¹¹'. The UNHRC further reminded the States that the crisis does not diminish the responsibility of national authorities and the

⁶⁰⁵ UN Committee for Economic, Social and Cultural Rights, An evaluation of the obligation to take steps to the "maximum of available resources" under an optional protocol to the Covenant; Statement, E/C.12/2007/1, 10 May 2007, §4, available at: http://www2.ohchr.org/english/issues/escr/docs/e_c12_2007_1.pdf.

⁶⁰⁶ UN Committee for Economic, Social and Cultural Rights, An evaluation of the obligation to take steps to the "maximum of available resources" under an optional protocol to the Covenant; Statement, E/C.12/2007/1, 10 May 2007, §6, available at: http://www2.ohchr.org/english/issues/escr/docs/e_c12_2007_1.pdf.

⁶⁰⁷ Address of the Miguel d'Escoto Brockmann, President of the 63rd session of the UN General Assembly to the Interactive Panel on the Global Financial Crisis, UN Headquarters, New York, 30 October 2008, available at: <http://www.un.org/ga/president/63/statements/gfcclosing301008.shtml>.

⁶⁰⁸ Secretary General's opening remarks to the press on the CEB's response to the Global Financial Crisis, 24 October 2008, available at: <http://www.un.org/News/Press/docs//2008/sgsm11882.doc.htm>.

⁶⁰⁹ Report of the Office of the President of the UN GA on the Interactive Panel on the Global Financial Crisis, October 2008, available at: http://www.un.org/ga/president/63/interactive/gfc/report_gfc101108.pdf.

⁶¹⁰ UNHRC, 'The impact of the global economic and financial crises on the universal realisation and effective enjoyment of human rights', A/HRC/S-10/2, 30 March 2009', available at: <http://www.ohchr.org/EN/HRBodies/HRC/SpecialSessions/Session10/Pages/10thSpecialSession.aspx>.

⁶¹¹ UNHRC, 'The impact of the global economic and financial crises on the universal realisation and effective enjoyment of human rights', A/HRC/S-10/2, 30 March 2009', preamble, available at: <http://www.ohchr.org/EN/HRBodies/HRC/SpecialSessions/Session10/Pages/10thSpecialSession.aspx>.

international community in the realisation of human rights, and called them to, in particular, establish and preserve social safety nets for the protection of the most vulnerable segments of societies⁶¹².

At the session, the UNHRC also requested the **Office of the United Nations High Commissioner for Human Rights** (OHCHR) to consult UN Member States and all other relevant stakeholders on the issue, with a view to presenting a report on the impact of the crisis on the realisation of all human rights and on possible actions required to alleviate it. In the ensuing report, a range of implications that the crisis had, or could have, on the effective enjoyment of human rights was noted⁶¹³. The report called for the protection of the most vulnerable populations affected by the crisis⁶¹⁴ and re-emphasised the need to reform the decision-making process on international economic policy⁶¹⁵. The report, at the same time, re-addressed the concerns of the Special Representative of the Secretary General on human rights, transnational corporations and other business enterprises that, **'while markets can be highly efficient means for allocating scarce resources and powerful forces for promoting social objectives ranging from poverty alleviation to the rule of law, they must have adequate institutional underpinnings and be embedded in the broader values of social community'**, repeating the recommendation that **'governments must avoid erecting protectionist barriers or lowering human rights standards for businesses'**⁶¹⁶.

In June 2009, the UNHRC Working group on the right to development discussed the impact of the crisis within the framework of the promotion and protection of all human rights, which were discussed against the backdrop of the crisis⁶¹⁷. Soon thereafter, a special UNHRC session resulted in the 2009 **Social Forum** focussing on the negative impacts of economic and financial crises on efforts to combat poverty⁶¹⁸. Moreover, as a response to the Working group discussions, in 2010, the UNHCHR issued a report on the impact of crisis on human rights⁶¹⁹.

In 2013, the OHCHR organised an **expert meeting** on promoting human rights in financial regulation and macroeconomic policies. The recommendations from the meeting suggested that a rights-based approach to financial regulations, macroeconomic policies, international

⁶¹² UNHRC, 'The impact of the global economic and financial crises on the universal realisation and effective enjoyment of human rights', A/HRC/S-10/2, 30 March 2009, Article 5, available at: <http://www.ohchr.org/EN/HRBodies/HRC/SpecialSessions/Session10/Pages/10thSpecialSession.aspx>.

⁶¹³ UNHRC, Report of the OHCHR on the impact of the global economic and financial crises to the realisation of all human rights and on possible actions to alleviate it, A/HRC/13/38, February 2010, §32, available at: <http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-38.pdf>.

⁶¹⁴ UNHRC, Report of the OHCHR on the impact of the global economic and financial crises to the realisation of all human rights and on possible actions to alleviate it, A/HRC/13/38, February 2010, §24, available at: <http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-38.pdf>.

⁶¹⁵ UNHRC, Report of the OHCHR on the impact of the global economic and financial crises to the realisation of all human rights and on possible actions to alleviate it, A/HRC/13/38, February 2010, §29, available at: <http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-38.pdf>.

⁶¹⁶ UNHRC, Report of the OHCHR on the impact of the global economic and financial crises to the realisation of all human rights and on possible actions to alleviate it, A/HRC/13/38, February 2010, §31, available at: <http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-38.pdf>.

⁶¹⁷ UNHRC, Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development, Report of the working group on the right to development, UN Doc. A/HRC/12/28, July 2009, available at: http://www2.ohchr.org/english/bodies/hrcouncil/docs/12session/A-HRC-12-28_E.pdf.

⁶¹⁸ UNHRC, Background report submitted by the United Nations High Commissioner for Human Rights pursuant to paragraph 9 of the Human Rights Council resolution 10/29 entitled "The Social Forum", UN Doc. A/HRC/SF/2009/3, August 2009, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/151/22/PDF/G0915122.pdf?OpenElement>.

⁶¹⁹ UNHCHR, Report of the Office of the United Nations High Commissioner for Human Rights on the impact of the global economic and financial crises on the realization of all human rights and on possible actions to alleviate it, UN Doc. A/HRC/13/38, February 2010, available at: <http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-38.pdf>.

co-operation, as well as promoting good governance and democratic accountability, should prevail⁶²⁰.

Apart from these general interventions, the UNHRC, while underpinning that in times of financial crisis, social security guarantees are often undermined by austerity measures, noted that, in many countries, women have been disproportionately affected by its impacts⁶²¹. The **UN Committee on the Elimination of All Forms of Discrimination against Women** requested States to ensure the incorporation of a gender perspective in the development and implementation of any programme or stimulus package implemented as a response to the world financial and economic crisis⁶²². The **Committee on the Rights of the Child**, on the other hand, reminded States that, in times of fiscal constraint, efforts must be made to sustain and expand social investment and social protection of those in the most vulnerable situations, and to employ an equitable approach, giving priority to children⁶²³. Similarly, the **Committee on the Economic, Social and Cultural Rights** expressed its concern that the levels of effective protection for rights have been reduced as a result of austerity measures adopted by States, which disproportionately curtailed the enjoyment of the rights by disadvantaged and marginalised individuals and groups, especially the poor, women, children, persons with disabilities, unemployed adults and young persons, older persons, gypsies, migrants and asylum seekers⁶²⁴.

Treaty bodies have made similar interventions. **Special UN procedures** such as the Special Rapporteurs on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health⁶²⁵, on slavery⁶²⁶, on the sale of children, child prostitution and child pornography⁶²⁷, as well as the Working Group on the issue of discrimination against women in law and in practice⁶²⁸, and the UN independent expert on foreign debt and human rights⁶²⁹, to name just a few, have published reports, comments or given statements reflecting on the human rights impact of the crisis⁶³⁰.

⁶²⁰ UNHCHR, Promoting a rights-based approach to economic stabilization, recovery and growth, background paper, April 2013 p. 14-15, available at: http://www.ohchr.org/Documents/Issues/Development/RightsCrisis/OHCHR_Background_Paper.doc.

⁶²¹ UNHRC, Report of the Working Group on the issue of discrimination against women in law and in practice, A/HRC/26/39, April 2014, §29.

⁶²² UN CEDAW Committee, Concluding observations on Spain, UN Doc CEDAW/C/ESP/CO/6, August 2009, §23-24, available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6OkG1d%2fPPRiCAqhKb7yhssmw5jHDOuNBd%2bTWAIG8TIGmF%2fJcFE6A8OFDaeXN%2bOWOiq2bUefxeX2hz6ab9LOPt0J8INwdlZB2XBxhJ9tWms49kEz9AljKpAxQ5LfTw69x>.

⁶²³ UNCR Committee, Concluding observations on Greece, UN Doc CRC/C/GRC/CO/2-3, August 2012, available at: http://www2.ohchr.org/english/bodies/crc/docs/co/CRC_C_GRC_CO_2-3.pdf.

⁶²⁴ UN CESCR Committee, Concluding observations on Spain, UN Doc. E/C.12/ESP/CO/5, June 2012, §8, available at: <http://www2.ohchr.org/english/bodies/cescr/docs/E.C.12.ESP.CO.5-FRE.doc>.

⁶²⁵ UNGA, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover, UN Doc. A/HRC/23/41, May 2013, available at: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A_HRC_23_41_ENG.pdf.

⁶²⁶ UNSG Special Rapporteur on slavery, statement at the Human Rights and the Financial Crisis in Focus: an expert meeting on promoting a rights-based approach to financial regulation and economic recovery, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13606&LangID=E>.

⁶²⁷ UNGA, Report of the Special Rapporteur on the sale of children, child prostitution and child pornography, Najat Maalla M'jid, UN Doc. A/HRC/25/48, December 2013, §§ 36-39, available at: http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session25/Documents/A-HRC-25-48_en.doc.

⁶²⁸ UNGA, Report of the Working Group on the issue of discrimination against women in law and in practice, UN Doc. A/HRC/26/39, 1 April 2014, §§ 26-31, available at: http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Documents/A-HRC-26-39_en.doc.

⁶²⁹ See e.g. UN News Centre Austerity measures in Greece undermining human rights, says UN independent expert, May 2013, available at: <http://www.un.org/apps/news/story.asp?NewsID=44802#.VICPGNLF8TA>.

⁶³⁰ For a more detailed overview of the reactions of UN mechanisms on the impact of crisis on fundamental rights, see Annex II to the UN HCHR Promoting a rights-based approach to economic stabilization, recovery and growth, background paper, pp. 16-62, available at: http://www.ohchr.org/Documents/Issues/Development/RightsCrisis/OHCHR_Background_Paper.doc.

Furthermore, numerous other global actors have had their say on the impact of crisis on internationally recognised fundamental rights. Thus, the **International Labour Organisation** (ILO) reacted to the impact of the crisis on various areas of work conditions, e.g. in the civil aviation industry immediately after the outbreak of the crisis⁶³¹, and also looked into the impact of the crisis on the right to decent work in general⁶³². The ILO also looked into the consequences of the crisis on particular groups of workers, such as migrant workers⁶³³. The ILO has, more recently, launched a number of new projects in response to the crisis in the area of employment⁶³⁴, making particular emphasis on the necessity to underline the importance of social protection rights, such as the right to pension and right to healthcare, as sound economic policy⁶³⁵.

Moreover, the **Organisation for Economic Co-operation and Development** (OECD) has been monitoring development in crisis-affected countries, noting that the central purpose of **economic policies is to improve people's lives**⁶³⁶, and finding that average life satisfaction declined, with the citizens in crisis-affected countries losing trust in their Governments and institutions⁶³⁷.

The **Group of Twenty** (G20), comprised of 19 countries plus the EU, which emerged as a response to a different crisis, i.e. in Asia at the end of the millennium, grew stronger and more influential in the wake of the 2008 global crisis. Assigning additional resources to the IMF and the multilateral development banks to cope with the demands arising from the crisis, they have played a key role in rebuilding confidence in the global financial system during the worst crisis in 80 years⁶³⁸.

The **international civil society movements** have also been prompt to respond to the challenges of tackling the impact of crisis and the response thereto to international fundamental rights. They took an active part in the work of the UN initiatives for the evaluation of the impacts of the crisis on fundamental rights, and conducted independent research in an attempt to assess the impacts.

Thus, in 2009, a leading global umbrella organisation called for a reform of decision-making processes on economic policy, banking, financial sector regulation and human rights-

⁶³¹ ILO working paper, The impact of the financial crisis on labour in the civil aviation industry, January 2009, available at: http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/publication/wcms_161566.pdf.

⁶³² ILO conference paper, The financial and economic crisis: A Decent Work response, March 2009, available at: http://ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_103580.pdf.

⁶³³ ILO working paper, The Global Economic Crisis and Migrant Workers: Impact and Response, January 2009, available at: http://ilo.org/wcmsp5/groups/public/---dgreports/---integration/documents/publication/wcms_126183.pdf.

⁶³⁴ ILO press release, New ILO projects to focus on the crisis response, social dialogue, youth employment and informal economy in Central and Eastern Europe, October 2014, available at: http://www.ilo.org/budapest/information-resources/press-releases/WCMS_312762/lang--en/index.htm.

⁶³⁵ ILO, World Social Protection Report: Building economic recovery, inclusive development and social justice, 2014/15, 2014, p. 120, available at: http://www.ilo.org/budapest/information-resources/press-releases/WCMS_312762/lang--en/index.htm.

⁶³⁶ Angel Gurría, OECD Secretary-General, Statement, November 2013, available at: <http://www.oecd.org/greece/oecd-report-measures-human-cost-of-crisis-underlines-need-to-invest-in-well-being.htm>.

⁶³⁷ OECD, **How's Life? 2013, Measuring Well-Being**, November 2013, available at: http://www.keepeek.com/Digital-Asset-Management/oecd/economics/how-s-life-2013_9789264201392-en#page1.

⁶³⁸ Wade M. G20: global financial crisis was catalyst for strengthening economic leadership, The Sydney Morning Herald, February 2014, available at: <http://www.smh.com.au/federal-politics/political-news/g20-global-financial-crisis-was-catalyst-for-strengthening-economic-leadership-20140220-3348x.html>.

oriented economic measures⁶³⁹. In 2010, a group of organisations prepared a report⁶⁴⁰ which was submitted to the high-level Segment of the UNHRC 13th session on the global economic and financial crisis, which aimed to inform the Report of the OHCHR on the impacts of the crisis⁶⁴¹. Furthermore, many other organisations reflected on the impacts of the crisis on various rights, calling for a human rights approach⁶⁴².

11.3. European response to the impact of austerity measures on fundamental rights

At European level, the **Council of Europe (CoE)**, as the continent's main guardian of human rights, quickly reacted on the risk the crisis was posing to the protection of fundamental rights⁶⁴³. In January 2009, the **Parliamentary Assembly** of the CoE (PACE) passed a few resolutions warning about the consequences of the financial crisis⁶⁴⁴, its challenges⁶⁴⁵, its social impact⁶⁴⁶ and the danger it presents for democracy and social rights⁶⁴⁷. PACE also reflected on the disproportionality of the impact of the crisis on the young, describing it as nothing less than a tragedy in the making⁶⁴⁸.

The CoE **Committee of Ministers (CoM)** considered that 'the current economic and financial crisis affects people unequally, with the greatest effects being felt by the weakest and the least protected', and recommending to 'combat the causes of inequalities, poverty, precariousness and discrimination by placing greater emphasis on human rights⁶⁴⁹'.

The CoE **Commissioner for Human Rights**, Thomas Hammarberg, and since April 2012 Nils Muižnieks (CoE Commissioner), have both been very involved and eloquent in observing the impact of austerity measures on human rights. Having visited Ireland in 2011, the CoE Commissioner warned about the danger that budget cuts could be detrimental for the protection of human rights, in particular regarding vulnerable groups:

⁶³⁹ International Network for Economic, Social and Cultural Rights, 'Statement on the Financial Crisis and Global Economic Recession: Towards a Human Rights Response', June 2009, available at: http://www.escr-net.org/usr_doc/EconomicCrisisHRStatement_ESCR-Net_final_eng_withendorsements.pdf.

⁶⁴⁰ Center of Concern et al., 'Bringing Human Rights to Bear in Times of Crisis'; march 2010, available at: http://www.escr-net.org/usr_doc/HRResponsestoEconCrisis_Final.pdf.

⁶⁴¹ UNHRC, Report of the OHCHR on the impact of the global economic and financial crises to the realisation of all human rights and on possible actions to alleviate it, UN Doc. A/HRC/13/38, available at: <http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-38.pdf>.

⁶⁴² See e.g. Center for Economic and Social Rights, 'Human Rights and the Global Economic Crisis', 2009 available at: <http://www.cesr.org/downloads/CESR-Human%20Rights%20and%20the%20Global%20Economic%20Crisis.pdf>, or Amnesty International, Amnesty International, Report 2009: State of the World's Human Rights, available at: http://news.bbc.co.uk/2/shared/bsp/hi/pdfs/28_05_09_amrep.pdf.

⁶⁴³ For a broader overview of the CoE action in relation to the austerity measures and their impact on fundamental rights, see: CoE Steering Committee for Human Rights, The impact of of the economic crisis and austerity measures on human rights in Europe; Preliminary study on existing standards and outstanding issues, CDDH(2014)011, June 2014, available at: http://www.coe.int/t/dghl/standardsetting/cddh/CDDH-DOCUMENTS/CDDH%282014%29011_EN.pdf.

⁶⁴⁴ PACE Resolution 1651(2009) on Consequences of the global financial crisis, January 2009, available at: <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta09/ERES1651.htm>.

⁶⁴⁵ PACE Resolution 1673(2009) on Challenges of the financial crisis for the world economic institutions, June 2009, available at: <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta09/ERES1673.htm>.

⁶⁴⁶ PACE Resolution 1717(2010) on The social impact of the economic crisis, April 2010, available at: <http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta10/eres1717.htm>.

⁶⁴⁷ PACE Resolution 1884(2012) on Austerity measures – danger for democracy and social rights, June 2012, available at: <http://assembly.coe.int/ASP/Doc/XrefViewPDF.asp?FileID=18916&Language=EN>.

⁶⁴⁸ PACE Resolution 1885(2012) on The young generation sacrificed: social, economic and political implications of the financial crisis, available at: <http://assembly.coe.int/nw/xml/Xref/Xref-XML2HTML-en.asp?fileid=18918&lang=en>.

⁶⁴⁹ CoM, Recommendation to member states on the Council of Europe on the Charter on Shared Responsibilities, CM/Rec(2014)1, January 2014, available at: <https://wcd.coe.int/ViewDoc.jsp?id=2152069&Site=CM>.

people with disabilities, elderly, children, migrants and asylum-seekers⁶⁵⁰. The CoE Commissioner expressed similar concerns after country visits to Spain⁶⁵¹, Portugal⁶⁵² and the Netherlands⁶⁵³.

In particular, the CoE Commissioner organised an expert brainstorming session, where the effects of the crisis were discussed⁶⁵⁴. The outcome of the brainstorming session was a report which ultimately examined the effects of the crisis on, inter alia, the right to work, the right to water, the right to education, the right to healthcare, the right to access to justice and freedom of expression⁶⁵⁵. The CoE Commissioner also warned about the adverse effect of austerity measures which may have disproportionate consequences on young people⁶⁵⁶, people with disabilities, Roma⁶⁵⁷ and women⁶⁵⁸.

The CoE **European Commission for the Efficiency of Justice** (CEPEJ) has paid particular attention to evaluating the efficiency and quality of justice against the background of the crisis in its reports. In its most recent report on the efficiency and quality of justice, the CEPEJ states that justice 'doesn't know the crisis', however, it also noted that this may not be said for Portugal, Spain and Greece⁶⁵⁹.

The **European Committee against Racial Intolerance** (ECRI) has reflected on the impact of the crisis on a number of rights, including access to welfare and housing for asylum-seekers⁶⁶⁰, facilitating access to education for Roma children and the functioning of national equality bodies⁶⁶¹.

Recently, the Council of Europe joined businesses in the discussion on austerity measures and their impacts on human rights, with the participation of the **European Committee of Social Rights** (ECSR). It was concluded that, the worst performing States in protecting human rights, are not necessarily those that commit most violations, but those that make the least effort to pursue commitments⁶⁶².

⁶⁵⁰ CoE Commissioner, Report following his visit to Ireland, CommDH(2011)27.

⁶⁵¹ CoE Commissioner, Report following his visit to Spain, CommDH(2013)18, October 2013, available at: <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2389885&SecMode=1&DocId=2077824&Usage=2>.

⁶⁵² CoE Commissioner, Report following his visit to Portugal, CommDH(2012)22, July 2012, available at: <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2134231&SecMode=1&DocId=1919090&Usage=2>.

⁶⁵³ CoE Commissioner, Report following his visit to the Netherlands, CommDH(2014)18, available at: <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2662990&SecMode=1&DocId=2218416&Usage=2>.

⁶⁵⁴ CoE Commissioner for Human Rights, Effects of the economic crisis on the enjoyment of human rights, Expert brainstorming, summary of discussions, November 2012, available at: <http://www.velferdarraduneyti.is/media/velferdarvakt09/Expert-Brainstorming-summary.pdf>.

⁶⁵⁵ CoE Commissioner for Human Rights, Safeguarding human rights in times of economic crisis, issue paper, December 2013, available at: <https://wcd.coe.int/ViewDoc.jsp?id=2130915>.

⁶⁵⁶ CoE Commissioner for Human Rights, Human Rights Comment: Youth human rights at risk during the crisis, March 2014, available at: <http://www.coe.int/en/web/commissioner/-/youth-human-rights-at-risk-during-the-crisis>.

⁶⁵⁷ CoE Commissioner for Human Rights, Safeguarding human rights in times of economic crisis, issue paper, December 2013, p. 45., available at: <https://wcd.coe.int/ViewDoc.jsp?id=2130915>.

⁶⁵⁸ CoE Commissioner for Human Rights, Human Rights Comment: **Protect women's rights during the crisis**, July 2014, available at: <http://www.coe.int/ar/web/commissioner/-/protect-women-s-rights-during-the-crisis>.

⁶⁵⁹ CEPEJ, Press review on the Publication of the CEPEJ 2014 edition of the evaluation report on the functioning of European Judicial Systems, p. 83, available at: <http://www.coe.int/T/dghl/cooperation/cepej/evaluation/2014/revue%20presse.pdf>.

⁶⁶⁰ ECRI, Report on Portugal (fourth reporting cycle), CRI(2013)20, 21 March 2013, available at: <http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Portugal/PRT-CbC-IV-2013-020-ENG.pdf>.

⁶⁶¹ ECRI, Report on Romania (fourth reporting cycle), CRI(2014)19, 19 March 2014, available at: <http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Romania/ROM-CbC-IV-2014-019-ENG.pdf>.

⁶⁶² **Statement of Mr Luis Jimena Quesada, President of the ECSR in UNITEE, 'Human Rights and Economic Crisis, The Answer of Responsible Entrepreneurship'**, report from conference, May 2014, available at: http://www.unitee.eu/wp-content/uploads/2014/05/CON_STRAS_DDH_report_ENG.pdf.

Apart from joining the dialogue with businesses, the ECSR published numerous country reports and was called on several occasions to evaluate the impacts on human rights of measures imposed in a number of States, including Greece⁶⁶³.

The **European Court of Human Rights** (ECtHR) has also dealt with a few cases resulting from certain austerity measures. In *Nagla v. Latvia*, the ECtHR discussed the authority of the State to intervene in the freedom of expression of journalists reporting on the effects of austerity measures, finding a violation of the right to freedom of expression where the **journalist's home was searched in an attempt to confirm the identity of her source**⁶⁶⁴. In the case of *R. Sz. v. Hungary* the ECtHR examined the entitlement of the State to apply a 98% tax rate on the severance pay of a public employee. The ECtHR found that imposing such a tax rate represented an excessive burden, in particular, since it only applied to payments from the public purse. **It concluded that, even though the 'the impugned measure served the interest of the State budget at a time of economic hardship [...] the majority of citizens were not obliged to contribute, to a comparable extent, to the public burden' and thus, the 'measure cannot be held to be reasonably proportionate to the aim sought to be realised**⁶⁶⁵.

The ECtHR has also recognised the difficulties with which the States have to cope with increasing influxes of migrants and asylum seekers, in the context of the economic crisis⁶⁶⁶. In addition, the ECtHR considered that the reduction in salary of more than 22% did not constitute a violation of the right to property, reiterating that as long as the States **remained within the 'bounds of its margin of appreciation, it is not for the Court to say whether the legislation represented the best solution for dealing with the problem or whether the legislature's discretion should have been exercised in another way**⁶⁶⁷.

The **EU** has had a leading role in the resolution of the crisis and has had a broad response to the impact of crisis on the rights of the European citizens. The concern about the impact of the crisis was voiced across the EU bodies.

The **European Parliament** continues to play an important role in the promotion and protection of fundamental rights and, in particular, with respect to the impacts of economic crisis on those rights.

In 2009, the Parliament requested a study to explore the reform of international aid in the wake of the global crisis, and its impact on developing countries⁶⁶⁸. This was in response to the developments of the crisis, early after its outbreak, and before it hit the EU Member States fully. It also adopted two resolutions on the effects of the global economic crisis on

⁶⁶³ ECSR, Decision on the merits, 7 December 2012, *Federation of employed pensioners of Greece (IKA-ETAM) v. Greece*, Complaint No. 76/2012, available at: https://www.coe.int/t/dghl/monitoring/socialcharter/complaints/CC76Merits_en.pdf; ECSR, Decision on the merits, *General Federation of employees of the national electric power corporation (GENOP-DEI) and Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece*, Complaint No. 66/2011, 23 May 2012, available at: https://www.coe.int/t/dghl/monitoring/socialcharter/complaints/CC66Merits_en.pdf.

⁶⁶⁴ ECtHR, *Nagla v. Latvia*, no. 73469/10, judgment of 16 July 2013, available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-122374>.

⁶⁶⁵ ECtHR, *R.Sz. v. Hungary*, no. 41838/11, judgment of 2 July 2013, available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-121958>.

⁶⁶⁶ See e.g. ECtHR, *Hirsi Jamaa and others v. Italy*, no. 27765/09, judgment of 23 February 2012, § 122, available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-109231>.

⁶⁶⁷ ECtHR, *Kouvaki and Adedy v. Greece*, nos. 57665/12 and 57657/12, decision of 7 May 2013, §48, available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-120092>.

⁶⁶⁸ Woods N., 'The International Response to the Global Crisis and the Reform of the International Financial and Aid Architecture', Briefing paper, European Parliament, DEV Committee, September 2009, available at: <http://www.europarl.europa.eu/document/activities/cont/200909/20090922ATT60987/20090922ATT60987EN.pdf>.

developing countries⁶⁶⁹, in which it called on the Commission to actively promote social and environmental responsibility in order to permit effective monitoring of the human rights impact of operations in those countries. Whilst expressing concern regarding the impact of the crisis in developing countries the Parliament had also emphasised the need for further research of the financial and economic crisis on the EU⁶⁷⁰. The Parliament called on the Commission, the Council and the Member States to 'fully assume their responsibilities in relation to the proper and full application of the EU's mandate and competences with regard to fundamental rights [... believing] that this is the only way to ensure that the European Union equips itself [...] to deal with the democracy, rule of law and fundamental rights crisis', in the context of the economic crisis which challenges the principle of solidarity, as an essential component of the EU's history and identity⁶⁷¹. The Parliament paid particular attention to the disproportionate impact of the crisis on certain groups of citizens⁶⁷².

The **Civil Liberties, Justice and Home Affairs** (LIBE) Committee of the European Parliament is concerned with the respect of fundamental rights within the EU. The LIBE Committee recognised that the EU was not only going through a period of economic and financial crisis, but also a democratic and constitutional crisis, emphasising that 'these tensions have highlighted the lack of appropriate instruments to cope with this crisis, as well as the lack of political will and the difficulties in applying the monitoring, evaluation and sanctioning mechanisms⁶⁷³'. Furthermore, the LIBE Committee has continuously been open to exchanging views with stakeholders and has, to that effect, held hearings on various topics related to fundamental rights⁶⁷⁴.

Furthermore, the European Parliament responds to a continuous stream of individual petitions on the issue, while the mainstreaming of human rights constantly figures in EU priorities and the actions of its agencies. The **Petitions** (PETI) Committee has, by virtue of its mandate, necessarily dealt with a number of citizens petitions related to the impact of the crisis on their fundamental rights. For example, some petitioners expressed concern and requested the Parliament to intervene in access to vaccinations for children⁶⁷⁵, while some others voiced concern around the closure of healthcare facilities and the laying-off of

⁶⁶⁹ European Parliament, Resolution on the effects of the global financial and economic crisis on developing countries and on development cooperation, P7_TA(2009)0029, 8 October 2009, available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2009-0029+0+DOC+XML+V0//EN> and P7_TA(2010)0089, 25 March 2010, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.CE.2011.004.01.0034.01.ENG#ntc4-CE2011004EN.01003401-E0004>.

⁶⁷⁰ See e.g. European Parliament, Resolution on the impact of the financial and economic crisis on human rights, P7_TA(2013)0179, 18 April 2013, §48, available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2F%2FEP%2F%2FTEXT%2BTA%2BP7-TA-2013-0179%2B0%2BDOC%2BXML%2BV0%2F%2FEN&language=EN>.

⁶⁷¹ European Parliament resolution on the situation of fundamental rights in the European Union (2010-2011), December 2012, available at: <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2012-0500&language=EN>.

⁶⁷² European Parliament resolution on gender aspects of the economic downturn and financial crisis, 2009/2204(INI), 17 June 2010, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.CE.2011.236.01.0079.01.ENG>.

⁶⁷³ LIBE Committee, Report on the situation of fundamental rights in the European Union (2012), 2013/2078(INI), 27 January 2014, available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A7-2014-0051+0+DOC+XML+V0//EN>.

⁶⁷⁴ For example, in November 2013, the LIBE Committee organised a public hearing on 'The Situation of Fundamental Rights in the European Union: how to strengthen fundamental rights, democracy and the rule of law in the EU'. More recently the LIBE Committee held a hearing on the fundamental rights situation in Hungary, on 22 January 2015.

⁶⁷⁵ Petition no. 0933/2013, by Theodoros Pitakiris (Greek) on the impact of the economic crisis and of the austerity measures imposed on Greece, available at: <http://www.petiport.europarl.europa.eu/petitions-content/docs/petitions/2015en.pdf> and no. 0073/2013, by *Christos Vlachojannis and Jannis Leventakis* (Greek), bearing 3,400 signatures on the public health situation on the Greek islands of Paros and Antiparos, available at: <http://www.petiport.europarl.europa.eu/petitions-content/docs/petitions/1348en.pdf>.

healthcare professionals⁶⁷⁶. Concerns were also expressed in relation to the general financial and budgetary situation in Member States affected by the crisis⁶⁷⁷ and the impact of austerity measures on the situation in the labour market⁶⁷⁸. In light of such petitions, in September 2013, the PETI Committee organised a public hearing on the impact of the economic crisis on EU citizens.

The **Economic and Monetary Affairs** (ECON) Committee has also been active and most recently reiterated that, while pursuing economic and financial stability, Member States must not undermine social stability, the European social model, and the social rights of EU citizens⁶⁷⁹. Parliament also re-emphasised that EU institutions are bound by EU law, and that they are obliged to act in accordance with fundamental rights, which, pursuant to Article 51 of the EU Charter, apply at all times⁶⁸⁰. The Committee on **Women's Rights and Gender Equality** (FEMM Committee) most recently discussed the disproportionate impact of the crisis on women – having held a public hearing, proposed a report, and suggested that the consequences of the crisis were disastrous for women⁶⁸¹.

With respect to **European Commission** initiatives, it is noted that, in 2010, it adopted its Strategy for the effective implementation of the Charter of Fundamental Rights by the European Union⁶⁸², announcing that the Commission would submit annual reports on the concrete steps undertaken for the effective implementation of the Charter⁶⁸³. In 2011, the Commission adopted an Operational Guidance on taking account of Fundamental Rights in Commission Impact Assessments⁶⁸⁴, while in 2012, the Council adopted the Strategic Framework on Human Rights and Democracy and an Action Plan⁶⁸⁵. Moreover, more recently within the EU Commission, a new post was introduced, that of the First Vice-President of Better Regulation, Inter-Institutional Relations, the Rule of Law and Charter of

⁶⁷⁶ Petition no. 1101/2014, by **G.B. (German)**, bearing 1,477 signatures, on the closing down of 350 polyclinics in Greece.

⁶⁷⁷ Petition no. 0482/2013, by **Sohail Khan (British)**, on the financial crisis in Cyprus, available at: <http://www.petiport.europarl.europa.eu/petitions-content/docs/petitions/1102en.pdf> and no. 1257/2013, by **M.M. (Italian)**, on distortions in the internal market and rating of banking systems in Europe, available at: <http://www.petiport.europarl.europa.eu/petitions-content/docs/petitions/2277en.pdf>.

⁶⁷⁸ Petition no. 0562/2013, by **M.L.C. (Spanish)** on the labour market and the economic crisis in Spain, available at: <http://www.petiport.europarl.europa.eu/petitions-content/docs/petitions/1123en.pdf> and no. 0187/2013, by **Jose Manuel Martin Alvarez (Spanish)**, on the lack of employment and on the economic crisis in Spain, available at: <http://www.petiport.europarl.europa.eu/petitions-content/docs/petitions/1039en.pdf>.

⁶⁷⁹ European Parliament, Committee on Economic and Monetary Affairs, 'Report on the enquiry on the role and operations of the Troika (ECB, Commission and IMF) with regard to the euro area programme countries', 2013/2277(INI), 28 February 2014, p. 36, available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML%2BCOMPARL%2BPE-526.111%2B01%2BDOC%2BPDF%2BV0//EN>.

⁶⁸⁰ Ibid.

⁶⁸¹ European Parliament, FEMM Committee, 'Draft Report on equality between women and men in the European Union - 2013', December 2014, (2014/0000(INI)) available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+COMPARL+PE-541.538+02+DOC+PDF+V0//EN&language=EN>.

⁶⁸² European Commission, Strategy for the effective implementation of the Charter of Fundamental Rights by the European Union, COM(2010) 573

⁶⁸³ Hence, so far, annual reports have been submitted by the Commission for 2010, 2011, 2012 and 2013. Available at: http://ec.europa.eu/justice/policies/rights/docs/report_EU_charter_FR_2010_en.pdf (2010), http://ec.europa.eu/justice/fundamental-rights/files/charter_report_en.pdf (2011), http://ec.europa.eu/justice/fundamental-rights/files/charter_report_2012_en.pdf (2012) and http://ec.europa.eu/justice/fundamental-rights/files/charter_report_2013_final_fr.pdf (2013).

⁶⁸⁴ European Commission, Operational Guidance on taking account on Fundamental Rights in Commission Impact Assessments, Commission Staff Working Paper, SEC(2011) 567 final, May 2011, available at: http://ec.europa.eu/smart-regulation/impact/key_docs/docs/sec_2011_0567_en.pdf.

⁶⁸⁵ Council of the European Union, EU Strategic Framework and Action Plan on Human Rights and Democracy, 11855/12, June 2012, available at: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/131181.pdf.

Fundamental Rights, to , *inter alia*, guide the work of the Commissioners for Justice, Consumers, Gender Equality, Migration and Home Affairs⁶⁸⁶.

Other EU bodies and agencies also dealt with the impacts of the crisis from their respective competencies and angles. The **EU Fundamental Rights Agency** (FRA), for instance, published a number of papers on the issue of fundamental rights and the crisis⁶⁸⁷. The **European Institute for Gender Equality** (EIGE) looked into the effects of the crisis on gender training in Member States⁶⁸⁸.

Furthermore, various EU bodies communicate with each other and with stakeholders, in an effort to ensure coordinated action to ensure the enjoyment of fundamental rights across Member States and beyond. Hence, in November 2013, the LIBE Committee organised a public hearing on the situation of fundamental rights in the EU, also involving civil society⁶⁸⁹. In close co-operation with the LIBE and the **Committee of Legal Affairs** (JURI), in 2012, FRA organised a conference where senior decision-makers, practitioners and experts, came together to examine existing policies and to discuss the strengths and weaknesses of different judicial systems in an attempt to identify how the crisis can be turned into an opportunity⁶⁹⁰.

European civil society was also responsive to the correlation between the crisis and respect for human rights. The **European Trade Union Confederation** (ETUC) singled-out the economic and social crisis as one of the key issues⁶⁹¹ and broadly published on the impact of the crisis on workers' rights⁶⁹². The ETUC's **European Trade Union Institute** (ETUI) also focused on the impact of austerity measures on fundamental rights. The ETUI examined the crisis in general, analysing the causes of crisis and possible exit strategies⁶⁹³ in the light of European enlargement⁶⁹⁴ and the conclusion of the MoUs⁶⁹⁵. It also inspected

⁶⁸⁶ Hearings of European Commissioners-designate, 'Briefing', September 2014, available at: http://www.europarl.europa.eu/EPRS/Commissioner_hearings/EPRS-Briefing-538921-Better-Regulation-FINAL.pdf.

⁶⁸⁷ See e.g. FRA, 'Protecting fundamental rights during the economic crisis', Working paper, December 2010, available at: http://fra.europa.eu/sites/default/files/fra_uploads/1423-FRA-Working-paper-FR-during-crisis-Dec10_EN.pdf; FRA, 'The European Union as a Community of values: safeguarding fundamental rights in times of crisis', Focus report, 2012, available at: http://fra.europa.eu/sites/default/files/annual-report-2012_en.pdf; FRA, 'Bringing the Charter to life – opportunities and challenges of putting the EU Charter of Fundamental Rights into practice', Copenhagen seminar report, Danish Presidency of the Council of the EU and EU Agency for Fundamental Rights, 15–16 March 2012, available at: <http://fra.europa.eu/sites/default/files/copenhagen-seminar-report.pdf>.

⁶⁸⁸ EIGE, 'Mapping gender training in the European Union and Croatia', Synthesis report, 2013, available at: <http://eige.europa.eu/sites/default/files/Mapping%20gender%20training%20in%20the%20European%20Union%20and%20Croatia.pdf>.

⁶⁸⁹ See e.g. LIBE Committee Public Hearing on 'The Situation of Fundamental Rights in the European Union: how to strengthen fundamental rights, democracy and the rule of law in the EU', Amnesty International speech, November 2013, available at: http://www.amnesty.eu/content/assets/Doc2013/AI_LIBE_Speech_051113_Written_version_FINAL.pdf http://www.amnesty.eu/content/assets/Doc2013/AI_LIBE_Speech_051113_Written_version_FINAL.pdf.

⁶⁹⁰ FRA, 'The crisis is a time to boost access to justice', December 2012, available at: <http://fra.europa.eu/en/press-release/2012/crisis-time-boost-access-justice> and FRA, 'Justice in austerity – challenges and opportunities for access to justice', Fundamental Rights Conference, 6-7 December 2012, available at: http://fra.europa.eu/sites/default/files/frc-2012-programme_en_2.pdf.

⁶⁹¹ For a full list of issues covered under the economic and social crisis portfolio of ETUC, see ETUC, 'Economic and Social crisis', available at: <http://www.etuc.org/issue/economic-and-social-crisis>.

⁶⁹² See e.g. ETUC, 'Towards a New Social Deal in Europe', 2009, available at: http://www.etuc.org/sites/www.etuc.org/files/Towards_a_new_social_deal.pdf or ETUC, 'A new path for Europe: ETUC plan for investment, sustainable growth and quality jobs', November 2013, available at: http://www.etuc.org/sites/www.etuc.org/files/EN-A-new-path-for-europe_3.pdf.

⁶⁹³ Kapoor S., 'The financial crisis, causes & cures', ETUI, 2010, available at: <http://www.etui.org/content/download/2013/22532/file/Financial+Crisis+-+causes+and+cures+www.pdf>.

⁶⁹⁴ Zahn R., 'European enlargement and the economic crisis: impact and lasting effects', ETUI, working paper, 2013, available at: <http://www.etui.org/content/download/7773/73765/file/13+WP+2013+01+EN+Web+version.pdf>.

the impact of the crisis on particular issues, including healthcare reforms⁶⁹⁶, inequality and poverty in times of crisis⁶⁹⁷, and working hours⁶⁹⁸. Similarly, the **European Public Health Alliance** (EPHA) focused on austerity in healthcare⁶⁹⁹.

Some were looking into the particular effects of austerity on certain groups of people, thus the **European Women's Lobby** looked into the correlation between austerity and gender equality⁷⁰⁰, while the **European Foundation Centre** (EFC) studied the impact of austerity on the rights of people with disabilities⁷⁰¹.

In addition, some interinstitutional networks, such as **Equinet** and the **European Judicial Training Network** (EJTN) also observed the impact of the crisis on the functioning of national human rights institutions⁷⁰² and the development of European case-law⁷⁰³.

It is important to note that the European Parliament, the Commission and other EU bodies, showed great interest in the initiatives of civil society and interinstitutional networks, and have taken part in discussions which followed many of their initiatives.

11.4. Response of monitoring mechanisms to the rights observed

11.4.1. Right to education

The right to education is guaranteed by several legal instruments at EU and international levels. In the **EU Charter** on Fundamental Rights (the EU Charter), **Article 14** guarantees the right to education, including compulsory education.

The right is, either in its abstract entirety, or certain particular aspects of it, also guaranteed by the: UDHR; ICCPR; ICESCR; ECHR; ESC; RESC; CRC; CRPD. Furthermore, several UNESCO instruments deal with the right to education – starting with the 1960 CADE.

The right to education in the context of austerity measures has been observed by the UN Committee on the Rights of the Child (the CRC Committee), the UN Independent Expert on

⁶⁹⁵ Fischer-Lescano A., 'Human Rights in Times of Austerity Policy: The EU institutions and the conclusion of Memoranda of Understanding', ETUI, February 2014, available at: [http://www.etui.org/content/download/13817/113830/file/Legal+Opinion+Human+Rights+in+Times+of+Austerity+Policy+\(final\).pdf](http://www.etui.org/content/download/13817/113830/file/Legal+Opinion+Human+Rights+in+Times+of+Austerity+Policy+(final).pdf)

⁶⁹⁶ Stamnati F. and Baeten R., 'Healthcare reforms and the crisis', ETUI, policy brief, 2014, available at: <http://www.etui.org/Publications2/Policy-Briefs/European-Economic-Employment-and-Social-Policy/Healthcare-reforms-and-the-crisis>.

⁶⁹⁷ Matsaganis M and Leventi C., 'Inequality, poverty and the crisis in Greece', ETUI, policy brief, 2011, available at: <http://www.etui.org/Publications2/Policy-Briefs/European-Economic-and-Employment-Policy/Inequality-poverty-and-the-crisis-in-Greece>.

⁶⁹⁸ Lang C. Schömann I. and Clauwaert S., 'Working time reforms in times of crisis', ETUI, working paper, 2013, available at: <http://www.etui.org/Publications2/Working-Papers/Working-time-reforms-in-times-of-crisis>.

⁶⁹⁹ EPHA, 'Reforming Health Systems in Times of Austerity', position paper, May 2013, available at: http://www.eph.org/IMG/pdf/EPHA_Position_Paper_Reforming_Health_Systems_in_Times_of_Austerity_FINAL-1.pdf.

⁷⁰⁰ European Women's Lobby, 'The price of austerity – The impact on women's rights and gender equality in Europe', October 2012, available at: http://womenlobby.org/spip.php?action=accéder_document&arg=2053&cle=71883f01c9eac4e73e839bb512c87e564b5dc735&file=pdf%2Fthe_price_of_austerity_-_web_edition.pdf.

⁷⁰¹ EFC, 'Assessing the Impact of European Governments' Austerity Plans on the Rights of People with Disabilities', key findings, 2012, available at: http://www.efc.be/programmes_services/resources/Documents/Austerity2012.PDF.

⁷⁰² Equinet, 'Equality Bodies – Current Challenges', 2012, available at: http://www.equineteurope.org/IMG/pdf/Current_Challenges_Perspective_MERGED_-_EN.pdf.

⁷⁰³ Thus, in July 2014 the EJTN organised a Seminar on Human Rights for EU Judicial Trainers, where the contribution of the ECHR to the poverty issue in times of crisis was discussed.

the effects of foreign debt and other related international financial obligations of Member States on the full enjoyment of all human rights, particularly economic, social and cultural rights, Cephias Lumina, and the ECSR.

In 2010, the **CRC Committee** expressed concern about the significant **inequality in the enjoyment of the right to education** among children in Belgium, and particularly, on the impact of socio-economic status on the education opportunities accessible to children and their school performance. The Committee noted with particular concern that, the school fees imposed, in spite of the constitutional guarantee of free education, greatly contributed to discrimination in access to education, and urged Belgium to take the necessary measures to abolish school fees in accordance with its Constitution⁷⁰⁴.

The **UN Independent Expert on the effects of foreign debt** and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights. Cephias Lumina, visited Greece in April 2013. His mission report⁷⁰⁵ to the UN Human Rights Council presented an overview of the situation in the country since 2010, focusing on key fundamental rights, including the right to education. The Independent Expert indicated that austerity measures 'have pushed the economy into recession and generally undermined the enjoyment of human rights, particularly economic, social and cultural rights'. Lumina underlined that access to public services, e.g. healthcare and education, had been subordinated to the increasingly elusive goal of restoring a sustainable public budget, while unemployment, homelessness, poverty and social exclusion significantly increased as a result of the measures. He concluded that 'the impact has been particularly severe on the most vulnerable: the poor, older persons, pensioners, persons with disabilities, women, children and immigrants⁷⁰⁶'. In his end of mission statement⁷⁰⁷ he 'called upon the Government and the Troika to adopt a human rights-based approach to the design and implementation of the fiscal consolidation and reform policies in Greece to ensure that these policies are consistent with the obligations for the promotion of economic, social and cultural rights that the country has assumed through ratification of core international human rights instruments'.

The ECSR observed the enjoyment of the right to education in Ireland, however, unrelated to austerity measures imposed in the country⁷⁰⁸.

⁷⁰⁴ UN CRC Committee, 'Consideration of reports submitted by States parties under article 44 of the Convention. Concluding observations: Belgium, UN Doc. CRC/C/BEL/CO/3-4, 18 June 2010, available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRICAqhKb7yhsK8r1vpHio%2fg7Mp83cTcS1c05QT5mnR5thnCrMz3uitpq9%2fANfxMfSodGWqJIH76%2bJZ%2f9Ef3M18BxdhvcysWt%2fQeq%2bNM%2bsxSi2tTKv68x7DC>.

⁷⁰⁵ UN GA Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, Cephias Lumina (Addendum) - Mission to Greece (22-27 April 2013), UN Doc. A/HRC/25/50/Add.1, 27 March 2014, available at: <http://www.ohchr.org/EN/Issues/Development/IEDebt/Pages/CountryVisits.aspx>.

⁷⁰⁶ UN GA Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, Cephias Lumina (Addendum) - Mission to Greece (22-27 April 2013), UN Doc. A/HRC/25/50/Add.1, 27 March 2014, pp.1-2 available at: <http://www.ohchr.org/EN/Issues/Development/IEDebt/Pages/CountryVisits.aspx>.

⁷⁰⁷ UN Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, Mr. Cephias Lumina, 'End of mission statement Athens', 26 April 2013, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13272&>.

⁷⁰⁸ See ECSR, 'Conclusions 2011 - Ireland - Article 7-3', 2011/def/IRL/, 12 September 2011, available at: <http://www.hudoc.esc.coe.int/esc2008/document.asp?item=4>.

11.4.2. Right to healthcare

As mentioned in section 11.2 the **UN Independent Expert** on the effects of foreign debt visited Greece in April 2013. His mission report⁷⁰⁹ underlined that access to public services, e.g. healthcare and education, had been subordinated to the increasingly elusive goal of restoring a sustainable public budget, while unemployment, homelessness, poverty and social exclusion significantly increased as a result of the measures.

In the periodic review of Greek performance in respect of the CRC⁷¹⁰, **the CRC Committee noted that 'the recession and the current financial and economic crisis are taking their toll on families and on public social investment, including on the prospects of implementing the Convention, especially with regard to Article 4'. It was stated that, in similar times, efforts in the field of social protection should increase, with priority being given to the most vulnerable, e.g. children. The Committee underlined the negative effects that the crisis has on public spending, 'affecting services provided to children and on subsistence costs incurred by families for basic needs such as food, fuel and housing, including increasing demands on payments for public services such as health care'. According to the CRC, the national budget and the budget process in Greece 'do not allow for a clear understanding and identification of financial resources allocated for the implementation of the rights of children'.**

In the issue paper on Safeguarding Human Rights in Times of Economic Crisis, **the CoE Commissioner** noted, inter alia, that health-related spending cuts, e.g. the goal of a maximum 6% of GDP set for public spending on health in Greece, have affected the right to enjoy the highest attainable standard of health⁷¹¹.

In relation to the long waiting lists for treatment, which have since 2002 been on the agenda of the **ECSR regarding Italy, in 2010, the ECSR found that 'the waiting time exceeds a medically acceptable period, having regard to the patient's condition and clinical needs'**⁷¹². The ECSR, thus, found that Italy was not in conformity with the requirements of Article 11(1) of the RESC.

11.4.3. Right to work

The UN CESCR expressed concerns in relation to unemployment among persons aged 55–64, women, persons with disabilities, and non-EU migrants in Belgium⁷¹³.

The ILO, as the main international body dealing with workers' rights, has inevitably had a say about the impact of austerity measures on the right to work. The **ILO's Committee of Experts on the Application of Conventions and Recommendations** (CEACR) issued

⁷⁰⁹ UN Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, Cephas Lumina (Addendum) - Mission to Greece (22 – 27 April 2013), UN Doc. A/HRC/25/50/Add.1.. Available at <http://www.ohchr.org/EN/Issues/Development/IFDebt/Pages/CountryVisits.aspx>.

⁷¹⁰ UN CRC Committee, 'Consideration of reports submitted by States parties under article 44 of the Convention - Concluding observations: Greece', UN Doc. CRC/C/GRC/CO/2-3, August 2012, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGRC%2fCO%2f2-3&Lang=en.

⁷¹¹ CoE Commissioner, 'Safeguarding human rights in times of economic crisis', issue paper, December 2'13, available at: <https://wcd.coe.int/ViewDoc.jsp?id=2130915>.

⁷¹² ECSR, Conclusions 2009 – Italy – Article 11-1, 2009/def/ITA/, 1 December 2010, available at: <http://www.hudoc.esc.coe.int/esc2008/document.asp?item=1>.

⁷¹³ UN CESCR, 'Concluding observations concerning the fourth periodic report of Belgium', UN Doc. E/C/12/BEL/CO/4, 23 December 2013, available at: <http://www.refworld.org/docid/52d3e33b4.html>.

numerous⁷¹⁴ observations concerning the application of several ILO Conventions, many of which concerned the impact of austerity measures on the right to work. Hence, in relation to the implementation of the Convention on Protection of Wages No. 95, the CEACR expressed a 'deep concern about the marked intensification of infringements of the labour legislation concerning the **regular payment of wages**' resulting from the deepening economic and social crisis which impacts heavily on the business climate, as well as about the cumulative effect that the considerable wage cuts in the public sector have had on **workers' income levels and living standards, and on compliance with labour standards related to wage protection**⁷¹⁵. They also found, in relation to the implementation of the Convention on Social Security (Minimum Standards), No. 102, that the 'the continuing contraction of the economy, employment and public finances caused by the policy of continuous austerity threatens the viability of the national social security system and has resulted in the increased impoverishment of the population, which seriously undermines the application of all accepted Parts of the Convention'⁷¹⁶.

The ECSR found that **restricting access of foreigners to public services** is not in conformity with Article 1(2) of the RESC, finding non-conformity with the prohibition of discrimination in employment⁷¹⁷. The ECSR also found that **notice periods** of 28 and 56 days for workers with more than three and more than ten years of service, respectively, was not in conformity with the requirements of Article 4(4) of the RESC⁷¹⁸, as was the notice period of 15 days of notice for persons with over six months service⁷¹⁹. Also, the **exclusion of employees from protection against dismissal during the probationary period**, as well as failure to provide such protection to those who have reached the normal retirement age, was in violation of Article 24 of ESC⁷²⁰.

The ECSR also found that setting a **minimum wage below the poverty level** for all workers under the age of 25, in Greece, interferes with their right to a remuneration safeguarding a decent standard of living and their right to enjoy social rights without discrimination⁷²¹. The same conclusion is reached when the minimum wage is manifestly unfair⁷²². Regarding special apprenticeship contracts, the ECSR also found a violation of Articles 7(1) and 7(2) in respect of the **exemption of minors from the right to paid annual leave** and of Article 10(2) in respect of the non-provision of an adequate system of apprenticeship and other systematic arrangements for training young people in various

⁷¹⁴ An advanced search on NORMLEX for the period between 2008 and 2014 showed that CEACR issued 52 Observations concerning Greece. Listing of the search results can be found here: <http://www.ilo.org/dyn/normlex/en/f?p=1000:20015:0::NO::>

⁷¹⁵ Observation (CEACR) - adopted 2012, published 102nd ILC session, 2013, available at: http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:3085303,102658,Greece,2012.

⁷¹⁶ Observation (CEACR) - adopted 2013, published 103rd ILC session, 2014, available at: http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:3150771,102658,Greece,2013.

⁷¹⁷ ECSR, 'Conclusions 2012 (BELGIUM), Articles 1,9,10, 15, 18, 20 and 25 of the Revised Charter', January 2013, available at: http://www.coe.int/t/dghl/monitoring/socialcharter/conclusions/State/Belgium2012_en.pdf. Also, ECSR, Conclusions X-1-Spain-Article 1-2, XX-1/def/ESP/, 12 July 2012.

⁷¹⁸ ECSR, 'Conclusions 2010 (BELGIUM), Articles 2, 4, 5, 6, 21, 22, 26 and 29 of the Revised Charter', December 2010, available at: http://www.coe.int/t/dghl/monitoring/socialcharter/conclusions/State/Belgium2010_en.pdf.

⁷¹⁹ ECSR Conclusions 2010 – Portugal – Article 4-4, 2010/def/PRT/.

⁷²⁰ ECSR, Conclusions 2012 – Ireland – Article 24, 2012/def/IRL/, 12 October 2012, available at: <http://www.hudoc.esc.coe.int/esc2008/query.asp?action=page&page=0×tamp=65444.86>. See also ECSR, *General Federation of employees of the national electric power corporation (GENOP-DEI) and Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece*, complaint no. 65/2011, decision on the merits of 23 May 2012, available at: http://www.coe.int/T/DGHL/Monitoring/SocialCharter/Complaints/CC65Merits_en.pdf.

⁷²¹ ECSR, *The General Federation of employees of the National Electric Power Corporation (GENOP-DEI) and Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece*, complaint no. 66/2011, decision on the merits of 23 May 2012, available at: http://www.coe.int/T/DGHL/Monitoring/SocialCharter/Complaints/CC66Merits_en.pdf.

⁷²² ECSR Conclusions 1010 – Portugal – Article 4-4, 2010/def/PRT/.

forms of employment. Moreover, it also assessed that, by excluding minors from **sickness allowances** and the reimbursement of prescription charges, and by setting occupational accident coverage at a rate of 1%, the legislation 'has the practical effect of establishing a distinct category of workers who are effectively excluded from the general range of protection offered by the social security system at large, and that this represents a deterioration of the social security scheme', in violation of Article 12(3) of the Charter⁷²³.

The ECSR also found that job placement through public employment services in Spain was not satisfactory⁷²⁴ and that, not allowing domestic workers time for breastfeeding was not in conformity with Article 8(3) of the ESC. The failure to provide equal treatment for migrants and nationals in self-employment was in contravention of Article 19(10)⁷²⁵, while permitting working hours in excess of 60 hours a week was in violation of Article 2(1) of the ESC.

In the case of *Torralbo Marcos*, in reference to the judicial fees and deposits required for lodging appeals in employment law cases, concerning the interpretation of Article 47 of the TFEU, **the CJEU** ruled that it did not have jurisdiction to answer the questions referred for a preliminary ruling by the *Juzgado de la Social No 2 de Terrassa* (Spain)⁷²⁶.

11.4.4. Right to a pension

Right to pension was also subject to ECSR's scrutiny. Five collective complaints were submitted to the Committee, contesting the provisions of Greek legislation which introduced, inter alia, cuts in pensions (primary and auxiliary), cuts in bonuses, the imposition of a social solidarity contribution deducted from pensions, and measures to reduce pensions in cases of parallel occupation. The ECSR noted that the obligations in Greece, undertaken within the framework of its economic adjustment, did not exclude national austerity measures from the scope of the ESC. Not all contested measures were found incompatible with the ESC, i.e. restrictions of seasonable bonuses and restrictions on pension rights over a certain level of pensions and under a certain age. However, the ECSR ascertained that the cumulative effect⁷²⁷ of the measures introduced since 2010 was 'bound to bring a significant degradation of the standard of living and the living conditions of many of the pensioners concerned'. Despite the compelling need to adopt measures quickly, the Government breached Article 12(3) of the ESC, because it should have better examined the potential impacts on vulnerable groups and taken appropriate measures to preserve, at least, an adequate level of protection. According to the ECSR's assessment, **the legitimate expectation of pensioners** that adjustments to their social security entitlements would be implemented considering their vulnerability, settled financial outlooks, and their right to adequate social protection and social security, was disregarded.

The **ECSR** also held that the requirement of residence for non-contributory old age pensions might be excessive and, hence, be in contravention of the requirements of Article

⁷²³ ECSR, *The General Federation of employees of the National Electric Power Corporation (GENOP-DEI) and Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece*, complaint no. 66/2011, decision on the merits of 23 May 2012, available at:

http://www.coe.int/T/DGHL/Monitoring/SocialCharter/Complaints/CC66Merits_en.pdf.

⁷²⁴ ECSR, Conclusions XIX-4-Spain-Article, XIX-4/def/ESP/, 2011.

⁷²⁵ ECSR, Conclusions XIX-3-Spain-Article, XIX-3/def/ESP/, 2010.

⁷²⁶ CJEU, *Torralbo Marrcos v Korota SA and Fondo de Garantía Salarial*, C-265/13, Judgment of the Court (Second Chamber) of 27 March 2014, available at: <http://curia.europa.eu/juris/liste.jsf?language=en&num=C-265/13>.

⁷²⁷ The cumulative effect was established by the ECSR in relation to measures adopted with Laws 3833/2010, 3845/2010, 3847/2010, 3863/2010, 3865/2010, 3866/2010, 3896/2011, 3986/2011, 4002/2011, 4024/2011, 4051/2012 and 4093/2012.

12(1) of the ESC. Both contributory and non-contributory pensions must be adequate, or else, the Member State may be found to be in breach of the provisions of Articles 23 of the RESC⁷²⁸ and 4 of the Additional Protocol to the ESC⁷²⁹.

The **CJEU** ruled in favour of workers in a case involving the loss of their pensions when the company collapsed. The CJEU ruled that offering retirees half of what they had been promised under a defined benefit scheme does not amount to protection by the Member State. The CJEU ruled that the economic situation of Ireland does not constitute an exceptional situation to justify a lower level of protection of the interests of employees regarding their entitlement to old-age benefits under a supplementary occupational pension scheme⁷³⁰. However, when asked to decide on the abolition of seasonal pension bonuses, **the General Court dismissed the action, asserting that the Council's decisions were not of direct concern to the applicants, and therefore did not meet the requirements of Article 263 TFEU on *locus standi***⁷³¹.

Regarding monitoring at supranational level, it is worth mentioning the decision of the **ECtHR** in the case *Conceição Mateus and Santos Januário v. Portugal*⁷³². The case concerned the compatibility of the suspension of Christmas and holiday pay of pensioners (that took place in 2012) with the ECHR. The ECtHR found that the legislator remained within the limits of its margin of appreciation, as previous measures involving remuneratory reductions contained in the State Budget Act for 2011 had proved to be insufficient. Hence, the ECtHR considered that it is not for them to decide whether better alternative measures could have been envisaged in order to reduce the State budget deficit. In the light of the exceptional economic and financial crisis faced by Portugal at the time, and given the limited extent and the temporary effect of the reduction of their holiday and Christmas subsidies (only valid for one year, because they were established in a State Budget Law), the Court considered that the applicants did not bear a disproportionate and excessive burden and found the applications inadmissible.

11.4.5. Other rights

Vulnerable groups

The **UN Independent Expert** on the effects of foreign debt concluded that the impact of austerity measures in Greece has been particularly severe on the most vulnerable: the poor, older persons, pensioners, persons with disabilities, women, children and immigrants⁷³³.

The **CEDAW Committee**⁷³⁴ noted, in relation to the Greek MoU, that the policies designed in cooperation with the EU institutions and the IMF have detrimental effects on women in

⁷²⁸ 2009/def/ITA

⁷²⁹ XIX-2/def/ESP (2009)

⁷³⁰ CJEU, *Hogan et al. v. Waterford Crystals Minister for Social and Family Affairs, Ireland and Attorney General*, C-398/11, Judgment of the Court (Third Chamber) of 25 April 2013, available at: <http://curia.europa.eu/juris/document/document.jsf?text=&docid=136782&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=2415428>.

⁷³¹ General Court, Order in case T-541/10, *Adedy, Papaspyros and Iliopoulos v. Council*, 27 November 2012.

⁷³² ECtHR, *Da Conceição Mateus and Santos Januário v. Portugal (dec.)*, nos. 62235/12 and 57725/12, Judgment of 8 October 2013, available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-128106>.

⁷³³ ECtHR, *Da Conceição Mateus and Santos Januário v. Portugal (dec.)*, nos. 62235/12 and 57725/12, Judgment of 8 October 2013, p.1-2, available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-128106>.

⁷³⁴ CEDAW/C/GRC/CO/7, Concluding observations on the seventh periodic report of Greece adopted by the Committee at its fifty fourth session (11 February – 1 March 2013), UN Doc. CEDAW/C/GRC/CO/7, March 2013, available at:

all spheres of life, and reminded that, even in times of fiscal constraints and economic crisis, special efforts must be made to respect human rights, to sustain and expand social investment and social protection, and to employ a gender-sensitive approach – giving priority to women in vulnerable situations. CEDAW recommended that Greece seeks targeted assistance and support from the EU and IMF to ensure full implementation of the Convention. The Committee also noted that specific measures in the area of employment seem to have a **greater impact on women**, e.g. the new public service statute that introduced wage cuts up to 50% could further increase the wage gap between sexes, the reduction of pensions for widows, and the measures protecting **working mothers**, had resulted in many cases, to them being offered part-time and rotation work with reduced levels of pay. It also observed significant interruptions in the functioning of nurseries and child-care facilities.

The **CoE Committee for the Prevention of Torture (CPT)**⁷³⁵ recognised that Greece's ability to deal with the increased influx of **irregular immigrants** is compounded by the current economic crisis.

Rights at work

The **UN CESCR**⁷³⁶ reminded Belgium of its obligation to guarantee the exercise of the right to strike in law, and in practice, and in full compliance with the Covenant. The Committee also requested Belgium to strengthen and continue its action to combat youth unemployment effectively, including for the least qualified, and to reinforce the impact of its specific plans and policies to reduce unemployment among non-EU migrants. The **CEACR** reiterated that the foundation of **collective bargaining** in Greece was jeopardised.

Right to housing

In their concluding observations concerning the fourth periodic report of Belgium in 2013⁷³⁷ the UN CESCR recommended, among other things, to put in place stronger measures to promote access, without discrimination, to **adequate housing for low-income persons**, marginalised and underprivileged population sectors, and persons of foreign origin. To the same end, they should also: pursue the policy of construction of social housing launched in various regions; promote access to such housing for these population groups; enact legislation to protect individuals from forced evictions, in-line with international standards, including the obligation to ensure that no person is rendered homeless or vulnerable to the violation of other human rights as a result of eviction.

The CJEU has had several rulings on the **Spanish foreclosure cases**. Thus, on the issue of the Spanish mortgage legislation⁷³⁸, the CJEU has estimated that the debtor had been disadvantaged against the bank with regard to the system of appeals against judicial

<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsldCrOIUTvLRFDjh6%2fx1pWCT%2bNjKOB%2bECovrawUqIXuTO%2bAvPXIbccbOj2ZfupikLOZ77Vj2OxpNZqRbHA7Mh1aw933FUzcf9mPkICt7Ess2>.

⁷³⁵ CPT, Report to the Greek Government of the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 4 to 16 April 2013), CPT/inf (2014) 26, October 2014, available at: <http://www.cpt.coe.int/documents/grc/2014-26-inf-eng.pdf>.

⁷³⁶ UN CESCR, 'Concluding observations concerning the fourth periodic report of Belgium', UN doc. E/C/12/BEL/CO/4, 23 December 2013, available at: <http://www.refworld.org/docid/52d3e33b4.html>.

⁷³⁷ UN CESCR, 'Concluding observations concerning the fourth periodic report of Belgium', UN doc. E/C/12/BEL/CO/4, 23 December 2013, available at: <http://www.refworld.org/docid/52d3e33b4.html>.

⁷³⁸ CJEU *Juan Carlos Sánchez Morcillo & María del Carmen Abril García v Banco Bilbao Vizcaya Argentaria, SA*, C-169/14, Judgment of the Court (First Chamber) of 17 July 2014, available at: <http://curia.europa.eu/juris/document/document.jsf?doclang=EN&text=&pageIndex=0&part=1&mode=DOC&docId=155118&occ=first&cid=217499>.

decisions⁷³⁹. In the anticipation of the new CJEU ruling, the Government already adopted measures in bankruptcy matters. This latest legislative intervention grants legal remedy to debtors in foreclosure proceedings, as they may now oppose the process and require the Provincial Court to review if unfair terms are included in the mortgage contract – which may have contributed to the unpaid dues.

The CJEU further ruled on the issue of unfair terms in consumer contracts⁷⁴⁰ with regard to **a case of objection to the enforcement of a mortgage against one of the parties' homes** (the other party being the bank with which the mortgage was contracted, and that these articles must be interpreted as precluding a system of enforcement. Thus, mortgage enforcement proceedings may not be stayed by the court of first instance. However, in its final decision, the court of first instance may, at most, award compensation in respect of the damage suffered by the consumer. The debtor, against whom the mortgage enforcement proceedings are brought, may not appeal against a decision dismissing his objection to that enforcement, whereas the creditor seeking enforcement may bring an appeal against a decision terminating the proceedings, or ordering an unfair term not to be applied. The CJEU also found that Spanish legislation was contrary to Directive 93/13/EEC⁷⁴¹ on unfair terms in consumer contracts, as it does not allow that those affected by a foreclosure proceeding can object to the court's decision. In its ruling, the CJEU granted power to judges to stop evictions, based on these grounds.

⁷³⁹ Pérez-Lanzac, C., 'El tribunal de la UE también considera abusiva la reforma de la ley hipotecaria', El País, online edition, 2014, available at: http://politica.elpais.com/politica/2014/07/17/actualidad/1405627638_479379.html.

⁷⁴⁰ CJEU, *Juan Carlos Sánchez Morcillo and María del Carmen Abril García v Banco Bilbao Vizcaya Argentaria SA*, C-169/14, Judgment of the Court (First Chamber) 17 July 2014, available at: <http://curia.europa.eu/juris/document/document.jsf?doclang=EN&text=&pageIndex=0&part=1&mode=DOC&docid=155118&occ=first&cid=217499>.

⁷⁴¹ CJEU, *Mohamed Aziz v. Caixa d'Estalvis de Catalunya, Tarragona i Manresa (Catalunyacaixa)*, C-415/11, Judgment of the Court (First Chamber) 14 March 2013, available at: <http://curia.europa.eu/juris/document/document.jsf?doclang=EN&text=&pageIndex=0&docid=135024&cid=214625>.

12. PROPOSALS FOR IMPROVING THE RESPECT OF FUNDAMENTAL RIGHTS IN TIMES OF ECONOMIC CRISIS

- General recommendations are aimed at ensuring that spending cuts are based on detailed evaluation of effectiveness, efficiency, relevance and added value of public expenditure, while the European Parliament is invited to continue insisting on the establishment of clear, transparent and binding rules of procedure for the interaction between the institutions within the Troika.
- In the field of the right to education, quality of education needs to be ensured. Particular attention should be paid to the education of children in vulnerable situations, while measures must not interfere with equal access to education by all children. Inclusive education needs to be ensured without exception. The European Parliament may continue supporting social aspects of education, providing that Troika actions are weighed against goals of the European Semester.
- The right to healthcare needs to be ensured in view of the pledge towards universal health coverage. Healthcare needs to be available, accessible, acceptable and of a good quality. Reforms need not only be quantitative, but qualitative, while health protection of vulnerable groups needs to be particularly safeguarded. The European Parliament is invited to continue dialogue with the European Commission on the issue of universal health coverage, and to support initiatives, such as Horizon 2020, towards this goal.
- With respect to the right to work, attention should be paid to making flexicurity more labour-friendly, ensuring that minimum wages are adequate and liveable, and that interventions into the right to work are co-ordinated with measures in the field of education. It is recommended that the European Parliament ensure systematic observance of social dialogue and encourage investment in human capital.
- Regarding the right to a pension, it needs to be ensured that the standard of living of pensioners is maintained and that there is legal certainty on pension entitlements. Pensioners should not be obstructed from remaining active in the workforce. The European Parliament should ensure the promotion of active ageing, e.g. by enabling people of retirement age to remain economically active.
- Access to justice needs to be affordable. Legal aid and judicial reforms need to ensure adequate and effective access to justice for all. The European Parliament needs to ensure that the requirements of the rule of law are put into place through proper access to justice, and to continue its legislative work on the Commission's proposal on provisional legal aid.
- Freedom of expression should not be unnecessarily limited, and freedom of assembly needs to be guaranteed without the unnecessary and disproportionate use of force. The European Parliament needs to keep reminding Member States about their international obligations towards ensuring these freedoms.
- The ECtHR needs to be ratified by the EU, while all international human rights instruments need to be complied with when adopting austerity measures. National protection mechanisms need to be empowered to deal with fundamental rights violations at national level. The European Parliament needs to ensure supervision over Troika performance, while the EU Ombudsman may also play an important role in the evaluation of EU participation in the Troika.

The analysis conducted for the purpose of the present study, and the input collected from stakeholders interviewed, both at the Member State and the EU levels, enable a few preliminary proposals to be put forward. These proposals could help improve the enjoyment of the fundamental rights covered by this study in the Member States observed, as well as at the EU level in general. These preliminary proposals could be further developed through more in-depth research, analysis and ex ante impact assessment.

Against this background, the following recommendations may be made, applicable either to the EU itself or to the Member States, depending on the situation and their respective competencies.

12.1. General recommendations

From the research undertaken in the course of this study, it rarely appeared that the spending cuts introduced during the crisis were specifically targeted at the wasteful uses of public resources⁷⁴². Rather, it seems that many of the imposed measures were horizontal, indiscriminate cuts across the policy areas they targeted, in order to meet financial savings that were determined in advance. For example, in Greece, in order to meet the goal of reducing the number of public employees by a certain number, the entire structure of the national broadcaster was abolished. Spending cuts should **not be horizontal** – they should be based on detailed evaluation of the effectiveness, efficiency, relevance and added value of public expenditure, and should include a public consultation.

While the alleged urgency of reducing public spending during the peak of the crisis may justify such harsh measures, the use of public resources should undergo more systematic evaluation that should include an opportunity for stakeholders and the public to transparently contribute to the process. In particular, the Troika involvement, or rather, the EU, as well as the IMF, involvement within the Troika, turned out to be questionable at national level on a number of occasions, and has also been brought into question by the European Parliament⁷⁴³. Hence, reforms imposed by the Troika have been examined and then abolished, by constitutional safeguard mechanisms, for example, in Portugal⁷⁴⁴. The international monitoring mechanisms have also expressed concerns, or found violations of

⁷⁴² In a similar vein, the SOLIDAR Social Progress Watch show that cuts were made in sectors relevant for human development and undermined job security, welfare benefits and social protection. Available at: <http://www.solidar.org/Social-Progress-Watch-Initiative.html>.

⁷⁴³ Hence the Parliament questioned 'the dual role of the Commission in the Troika as both an agent of Member States and an EU institution' asserting that there was a 'potential conflict of interest within the Commission [...] especially in policy areas such as competition and state aid policy and social cohesion' pointing out that 'such a situation contrast with the Commission's normal role, which is to act as an independent principal protecting the EU interest and ensuring the implementation of EU rules within the limits established by the Treaties.' European Parliament, Report on the enquiry on the role and operations of the Troika (ECB, Commission and IMF) with regard to the euro area programme countries, (2013/2277(INI)), 28 February 2014, available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A7-2014-0149+0+DOC+XML+V0//EN>.

⁷⁴⁴ Hence, while considering the Portuguese State Budget Law for 2013, the Portuguese Constitutional Court established the existence of a guarantee of a 'right to a minimum level of subsistence' and found that this was not put in place by the state when adopting the budget reductions in sickness and unemployment benefits. Constitutional Court of Portugal, *Ruling No.187/13*, 5 April 2013, as per CoE Commissioner, 'Safeguarding human rights in times of economic crisis', issue paper, December 2013, p. 29, and sources cited therein, available at: <https://wcd.coe.int/ViewDoc.jsp?id=2130915>.

fundamental rights guarantees contained in instruments such as ILO Conventions⁷⁴⁵ and ESC⁷⁴⁶.

Bearing these considerations in mind, the following general recommendations could be followed throughout any action of the European Parliament, other EU institutions and the Member States.

- It is often noted that measures are undertaken just for the sake of savings, without assessing their possible impact on the rights of individuals. The EU institutions involved in the process of introducing austerity measures should make sure that drawing on the Horizontal Social Clause of the Treaty, an **ex-ante impact assessment** of all intended measures is performed to evaluate the level of enjoyment of fundamental rights by all, against the measures intended⁷⁴⁷. Stakeholder organisations should be empowered to engage in setting priorities for (social) investment that would benefit socio-economically vulnerable people, as well as to indicate the impact of measures on fundamental rights in any such ex-ante impact assessment.
- In principle, austerity measures should not only serve as a tool of temporary fiscal consolidation or reducing national deficits to the pre-crisis levels, but rather a **means to address structural weaknesses** brought to the crisis in the first place⁷⁴⁸.
- There is a need to evaluate whether formal documents were **clearly communicated to and considered in due time** by the national parliaments and the European Parliament, and adequately discussed with the social partners⁷⁴⁹. Such practices may have negative impacts, as they keep 'information behind closed doors on citizens' rights [and] on the stability of political situations in the countries concerned', – bringing into question 'the trust of citizens in democracy and the European project'⁷⁵⁰. In order to maintain democratic legitimacy of the measures introduced, continuation of such practices should be avoided at all costs. Whenever a measure is imposed in a particular protected field, **stakeholders**, e.g. social

⁷⁴⁵ The ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR) issued numerous observations concerning the application of several ILO Conventions, many of which concerned the impact of the austerity measures on the right to work. See section 11.4.3 above.

⁷⁴⁶ The ECSR has observed impacts of numerous measures in the collective complaints and national reports procedures. For more details on their interventions see section 11.4 above.

⁷⁴⁷ Frazer H. and Marlier E., 'Social Impact of the Crisis and Developments in the Light of Fiscal Consolidation Measures', Summary report, EU Network of Independent Experts on Social Inclusion, European Commission, DG Employment, Social Affairs and Inclusion, February 2011, p. 5, available at: http://www.ceps.lu/publi_viewer.cfm?tmp=2710. For a proposal of possible tools to perform such an impact assessment, see for example Brewer M., 'Peer Review in Social Protection and Social Inclusion 2011: Developing Effective *ex ante* Social Impact Assessment with a Focus on Methodology, Tools and Data Sources', Synthesis Report, European Commission, DG Employment and Social Solidarity, 2012.

⁷⁴⁸ Frazer H. and Marlier E., 'Social Impact of the Crisis and Developments in the Light of Fiscal Consolidation Measures', Summary report, EU Network of Independent Experts on Social Inclusion, European Commission, DG Employment, Social Affairs and Inclusion, February 2011, p. 5, available at: http://www.ceps.lu/publi_viewer.cfm?tmp=2710.

⁷⁴⁹ For example, the European Parliament noted that in Cyprus, insufficient time was left for the authorities to fully negotiate detailed aspects of the MoU. It also made note of failure of the Troika to ensure sufficient accountability in permitting public understanding of the negotiations of the programmes. European Parliament resolution of 13 March 2014 on the enquiry on the role and operations of the Troika (ECB, Commission and IMF) with regard to the euro area programme countries, (2013/2277(INI)), §§ 30 and 39, available at: <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2014-0239&language=EN&ring=A7-2014-0149>.

⁷⁵⁰ See European Parliament resolution of 13 March 2014 on the enquiry on the role and operations of the Troika (ECB, Commission and IMF) with regard to the euro area programme countries, (2013/2277(INI)), § 30, available at: <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2014-0239&language=EN&ring=A7-2014-0149>.

partners, civil society, public authorities and experts, **and specialist organisations**, should be engaged in dialogue and involved in transparent decision-making processes⁷⁵¹ to ensure its appropriateness and legitimacy⁷⁵².

- Retrogression in the level of protection of progressively-achievable rights should be an exception, rather than a rule. The EU needs to **ensure that there will be no retrogression** in the level of protection of economic, social and cultural rights, and should enable Member States to work further towards their progressive realisation. Should retrogressive measures be deemed unavoidable, they must be fully justified by an analysis of the totality of resources available to each affected Member State (including those already available in the Member State or those available through international assistance and cooperation). Even where retrogressive measures are justified, they must demonstrate that they protect the rights, particularly those of the most vulnerable, to which end the States should make sure that all alternatives have been exhausted and that the measures are necessary, proportionate, respectful of minimum core obligations and non-discriminatory⁷⁵³. Any such retrogression can only be temporary, with the objective to restore the initial level as soon as the situation allows.
- It is necessary to maintain supervision over measures, to ensure their continued effectiveness and efficiency, as well as ascertain that they continue being human rights-compliant throughout their implementation. To that end, periodic independent ex-post social impact assessments, and **monitoring and reporting mechanisms**, should be established at both the EU level and Member State level in order to ensure that, once imposed, the measures do not cause negative impacts on fundamental rights. Such mechanisms should engage stakeholders and must become integral to the assessment process for programme countries, so that, if reform is needed, it is tailored to individual circumstances, capable of taking account of different impacts on different groups, and of cumulative effects on certain groups⁷⁵⁴. Human rights should become central, not only to current and future discussions with the Troika over the financial assistance programmes⁷⁵⁵, but also at the adoption of self-imposed austerity measures in both the Troika and the non-Troika Member States.
- Too often, throughout the present study, disproportionate negative impacts of measures were recorded, affecting particularly vulnerable groups of people. Under no circumstances should a measure affect a vulnerable group disproportionately. Measures should ensure **positive action towards empowerment of people in unfavourable situations**, including, but not limited to: women, poor or at risk of poverty, working poor, people (in particular children) with disabilities and/or their families; minorities; immigrants, elderly and youth. Intervention of the EU towards supporting a Member State should be made under the condition that any bail-out

⁷⁵¹ Frazer H. and Marlier E., 'Social Impact of the Crisis and Developments in the Light of Fiscal Consolidation Measures', Summary report, EU Network of Independent Experts on Social Inclusion, European Commission, DG Employment, Social Affairs and Inclusion, February 2011, p. 5, available at: http://www.ceps.lu/publi_viewer.cfm?tmp=2710.

⁷⁵² Leahy A., Healy S., and Murphy M., 'The European Crisis and Its Human Cost – A Call for Fair Alternatives and Solutions', Crisis monitoring report, Caritas Europa, 2014, p. 88, available at: http://www.caritas.eu/sites/default/files/caritascrisisreport_2014_en.pdf.

⁷⁵³ UN Office of the High Commissioner on Human Rights, 'Report on austerity measures and economic and social rights', 2013, p. 25 and the sources cited therein, available at: http://www.ohchr.org/Documents/Issues/Development/RightsCrisis/E-2013-82_en.pdf.

⁷⁵⁴ Leahy A., Healy S., and Murphy M., 'The European Crisis and its Human Cost – A Call for Fair Alternatives and Solutions', Crisis monitoring report, Caritas Europa, 2014, p. 88, available at: http://www.caritas.eu/sites/default/files/caritascrisisreport_2014_en.pdf.

⁷⁵⁵ FIDH & Hellenic League for Human Rights Report, 'Downgrading rights: the cost of austerity in Greece', December 2014, available at: <https://www.fidh.org/IMG/pdf/grece646a2014.pdf>, p. 70.

package not only sets economic and financial targets but also includes social objectives and targets, making sure that the burden of austerity is fairly shared, and ensuring that measures introduced are progressive and protective of the most vulnerable⁷⁵⁶.

To these ends, the European Parliament may consider continuing its intervention towards **insisting on 'the establishment of clear, transparent and binding rules of procedure** for interactions between the institutions within Troika, and the allocation of tasks and **responsibilities, therein [...] in order to enhance transparency and to enable stronger** democratic control over and underpin the credibility of the work of the Troika⁷⁵⁷. **At the same time, the European Parliament may promote the development of an 'improved** communication strategy for ongoing and future financial assistance programmes⁷⁵⁸, and furthering the efforts on codifying the surveillance procedures to be employed for the Eurozone countries experiencing financial difficulties, as already defined by the Regulation No 472/2013⁷⁵⁹.

12.2. Right to education

In principle, public spending in education should not be seen as a cost, but rather as an investment, and should be observed as such. Economic growth and competitiveness are becoming increasingly dependent on the supply of, and demand for, higher levels of skills. **'Nearly all employment projections predict growing prospects for economies with high levels** of skills and declining prospects for those without sufficient skills⁷⁶⁰. **At the same time, in** 2013, over two million vacancies across Europe were unfilled, despite the unemployment rate of almost 23%⁷⁶¹. This calls for careful reconsideration of the interventions in the right to education.

Given the importance of education and the possible long-term consequences of interference therewith, the recommendations in this field are:

- To ensure that any cuts in funding in the field of education are done carefully, to not affect the equal opportunities of all children or impede children in disadvantageous positions from equal access to **quality education**, provided within an inclusive

⁷⁵⁶ Frazer H. and Marlier E., 'Social Impact of the Crisis and Developments in the Light of Fiscal Consolidation Measures', Summary report, EU Network of Independent Experts on Social Inclusion, European Commission, DG Employment, Social Affairs and Inclusion, February 2011, p. 5, available at: http://www.ceps.lu/publi_viewer.cfm?tmp=2710.

⁷⁵⁷ European Parliament resolution of 13 March 2014 on the enquiry on the role and operations of the Troika (ECB, Commission and IMF) with regard to the euro area programme countries, (2013/2277(INI)), §§ 66, available at: <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2014-0239&language=EN&ring=A7-2014-0149>.

⁷⁵⁸ European Parliament resolution of 13 March 2014 on the enquiry on the role and operations of the Troika (ECB, Commission and IMF) with regard to the euro area programme countries, (2013/2277(INI)), §§ 67, available at: <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2014-0239&language=EN&ring=A7-2014-0149>.

⁷⁵⁹ European Parliament and the Council of the European Union, Regulation (EU) No 472/2013 of 21 May 2013, on the strengthening of economic and budgetary surveillance of Member States in the euro area experiencing or threatened with serious difficulties with respect to their financial stability, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32013R0472&from=EN>.

⁷⁶⁰ OECD, 'Skills Outlook', 2013, available at: http://skills.oecd.org/documents/OECD_Skills_Outlook_2013.pdf.

⁷⁶¹ EU Council, Council Conclusions on investing in education and training – a response to 'Rethinking education: Investing in skills for better socio-economic outcomes' and the '2013 Annual Growth Survey', 2013/C 64/06, 5 March 2013, available at: [http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52013XG0305\(01\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52013XG0305(01)&from=EN).

environment⁷⁶². Education should be free-of-charge and accessible to the most vulnerable ones, and should not become a commodity that only the rich can afford. Quality education must be considered as a basic human right and a public good. Therefore, quality education for all pupils, students and adults should be defined as the full personal and professional development of the individual and his/her contribution to a democratic society.

- Acknowledging the importance of education as a priority lever for progress, policies should be designed to be conducive to economic and social progress. **Growth-enhancing investments** must target education and training as the area that has the biggest potential to: put the EU on a path towards sustainable economic growth; **improve competitiveness and social cohesion; raise citizens' standard of living and well-being; foster redistribution of wealth; provide citizens with the skills and competences they need for coping with labour-market transitions and the repercussions of economic crises.** Any measure interfering with the right to education needs to be weighed against the applicable international standards, e.g. the CRC, the CRPD, the UNESCO Convention against Discrimination in Education, the ESC and the RESC. The EU institutions and the States should pay particular attention that any such measure does not disproportionately affect **children in vulnerable situations**⁷⁶³.
- The study has shown that several types of austerity measures may interfere with the right to education of some, or all, children in the Member States concerned. National Governments should ensure that measures such as: **mergers and closing of schools**, restrictions in the provision of **school transport**, withdrawal of resources for **language instruction** for children who have not mastered the language in which they receive education, abolition of **civic education**⁷⁶⁴, privatisation of potentially profitable education **services, decrease of initial teachers' training and continuous professional development, reducing modern teaching tools and resources, and declining investment in safe school environments, or other spending cuts, do not jeopardise access to education for all, irrespective of his/her particular circumstances.** Moreover, the right to recognition and validation of learning outcomes of non-formal and informal learning should be provided.
- **The right to inclusive education** for children with disabilities is an international obligation binding on the EU and almost all Member States, by virtue of their ratification of the CRPD. It needs to be ascertained that inclusive education is **ensured for children with disabilities, in particular, bearing in mind that 'jeopardising inclusive education will have long-term negative consequences for the country,**

⁷⁶² CoE Commissioner, Report following his visit to Spain, CommDH(2013)18, October 2013, p. 2, available at: <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2389885&SecMode=1&DocId=2077824&Usage=2>. See also Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, Cephias Lumina', Addendum – Mission to Greece (22 – 27 April 2013), 7 March 2014, UN Doc. A/HRC/25/50/Add.1, §75, available at: <http://www.ohchr.org/EN/Issues/Development/IFDebt/Pages/CountryVisits.aspx>.

⁷⁶³ It is difficult to give a fixed definition of children in vulnerable situations. However, the European Commission has accepted that some 'categories of children who can face greater threats to their rights and well being are, for example: children at risk of poverty and social exclusion; children with disabilities; children seeking asylum; unaccompanied or separated children; Roma children; children exposed to cyber criminality and bullying; victims of sexual exploitation and trafficking; missing children'. European Commission, DG Justice, 'EU action to protect children from violence and when they are vulnerable', undated, available at: http://ec.europa.eu/justice/fundamental-rights/rights-child/protection-action/index_en.htm.

⁷⁶⁴ CoE Commissioner, Report following his visit to Spain, CommDH(2013)18, October 2013, p. 2, available at: <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2389885&SecMode=1&DocId=2077824&Usage=2>.

lasting far beyond the current economic and financial crisis⁷⁶⁵. Under no circumstances should there be measures that will interfere with the full achievement of the right to inclusive education for all children, or lead towards maintaining or expanding special education facilities. This needs to be done bearing in mind that 'children with disabilities are not [to be] excluded from free and compulsory primary education, or from secondary education, on the basis of disability', and that they have the right to 'quality and free primary education and secondary education on an equal basis with others in the communities in which they live'⁷⁶⁶.

- Education programmes should encompass **civic education modules** that help people to learn and exercise their fundamental rights, and through that, enhance their civic participation.
- Member States should be encouraged, at European, national, regional and local levels, to **strengthen social dialogue**, in particular, in education and training.

In view of these recommendations for specific actions, the **European Parliament** should follow in the steps of the EU Council in ensuring that EU institutions continue to support the **social aspects of education** and, at the same time, making sure that equal opportunities and access to quality education are set as priorities for both EU institutions and Member States, so that education systems 'can continue to contribute to fostering social cohesion, sustainable development, active citizenship and personal fulfilment in European societies'⁷⁶⁷. In particular, the EU's role in the Troika needs to be weighed against the goals set by the **European Semester**, given that one of the principal goals of the EU 2020 Strategy sets a target on educational attainment, which tackles the problem of early school leavers⁷⁶⁸. This should be done bearing in mind that Troika Countries are exempt from the Semester-reporting processes. There needs to be co-ordination between reconstruction programmes and Country-Specific Recommendations (CSRs) in Troika countries - which for the time being, do not receive CSRs apart from implementation of their MoUs, while the CSRs in other countries need to be informed by the particular dimension of austerity.

12.3. Right to healthcare

Access to healthcare is not an absolute right in terms of guaranteeing the right for everyone to be healthy. It does need, however, to meet the requirements of availability, universal coverage, accessibility, affordability, acceptability and quality⁷⁶⁹. In fact, it has already been noted that the decision-makers 'needed a more comprehensive approach to set priorities and obtain maximum benefit from limited resources, without compromising the ethical and social values underpinning health'⁷⁷⁰. As already acknowledged by the EU

⁷⁶⁵ CoE Commissioner, Report following his visit to Spain, CommDH(2013)18, October 2013, p. 19, available at: <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2389885&SecMode=1&DocId=2077824&Usage=2>.

⁷⁶⁶ CRPD, Article 24(2)

⁷⁶⁷ EU Council, Council Conclusions on investing in education and training – a response to 'Rethinking education: Investing in skills for better socio-economic outcomes' and the '2013 Annual Growth Survey', 2013/C 64/06, 5 March 2013, available at: [http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52013XG0305\(01\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52013XG0305(01)&from=EN).

⁷⁶⁸ The Strategy aims to reducing the drop-out rate to 10% from the current 15%, whilst increasing the share of the population aged 30-34 having completed tertiary education from 31% to at least 40% in 2020. See: European Commission, 'Communication from the Commission: EUROPE 2020 – A strategy for smart, sustainable and inclusive growth', COM(2010) 2020 final, 3 March 2010, p. 11, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:2020:FIN:EN:PDF>.

⁷⁶⁹ WHO and OHCHR, 'The Right to Health', Joint Fact Sheet, WHO/OHCHR/323, August 2007, available at: http://www.who.int/mediacentre/factsheets/fs323_en.pdf.

⁷⁷⁰ Sorenson C., Drummond M., Kanavos P., 'Ensuring Value for Money in Health Care: The role of health technology assessment in the European Union', European Observatory of Health Systems and Policies,

Council, reforms in the health sector are necessary in order to balance the need to provide universal health care with an increasing demand related to an ageing population, technological development, and growing patient expectations⁷⁷¹. However, considering the fact that, in the atmosphere of austerity, there are significant budgetary constraints and **sound reforms are needed to 'achieve both a more efficient use of public resources and the provision of high quality healthcare'**⁷⁷². **Reforms need to ensure minimum levels of adequate continuous and affordable health services – bearing in mind that, a national health system should ensure that the primary care system has a central function in a country's health system**⁷⁷³. It is emphasised that, any intervention into this right should have the strategic aim of providing universal health coverage⁷⁷⁴ to everyone, and co-payment systems should take into account the income of each patient, particularly regardless of legal or residence status⁷⁷⁵.

In view of these considerations, the right to healthcare should be safeguarded through the following measures:

- Universal health coverage, as an emerging concept, is understood by the WHO as the practical expression of the concern for health equity and the right to health⁷⁷⁶. Any measure interfering with the right to healthcare needs to be weighed against the requirement for the provision of **universal health coverage**, which has already been acknowledged and accepted as a European value⁷⁷⁷.
- Often the interventions into the right to healthcare, such as the mergers of hospitals, reductions in medical staff and number of hospital beds, increases in patient co-payments for services and pharmaceuticals, restrictions in the scope of insurance coverage, and similar measures, have proved to affect the availability of, and accessibility to, healthcare. The austerity caused a shock to the healthcare systems, having large negative effects on the availability of healthcare, coupled with a large positive effect on the side of demands for healthcare services⁷⁷⁸. Regardless

Observatory Studies Series No 11, 2008, p. 5, available at: http://www.euro.who.int/_data/assets/pdf_file/0011/98291/E91271.pdf. As is explained in more detail in section 5.2 above, calls for cost effectiveness and increase in efficiency were made even before, and unrelated to austerity, in 'the search for improved or stable quality service provision within given financial limits to achieve health and satisfaction among the population served.' Custodero A. (Repubblica.it), 'Sanità, così si sprecano due miliardi all'anno: Ospedali pagano i prodotti il 30% in più', May 2010.

⁷⁷¹ EU Council, 3054th Council meeting, Economic and Financial Affairs, Press Release, 17447/10, PRESSE 333, PR CO 44, 7 December 2010, p. 11, available at: http://europa.eu/rapid/press-release_PRES-10-333_en.pdf.

⁷⁷² EU Council, 3054th Council meeting, Economic and Financial Affairs, Press Release, 17447/10, PRESSE 333, PR CO 44, 7 December 2010, p. 11, available at: http://europa.eu/rapid/press-release_PRES-10-333_en.pdf.

⁷⁷³ WHO, Declaration of Alma-Ata, International Conference on Primary Health Care, Alma-Ata, September 1978, Article VI, available at: http://www.who.int/publications/almaata_declaration_en.pdf.

⁷⁷⁴ WHO, 'Universal health coverage (UHC)', Fact sheet N° 395, September 2014, available at: <http://www.who.int/mediacentre/factsheets/fs395/en/>.

⁷⁷⁵ MdM Greece, 'Access to Healthcare in Europe in Times of Crisis and Rising Xenophobia: An overview of the situation for people excluded from healthcare systems', April 2013, p. 36, available at: <http://www.medecinsdumonde.org/content/download/14828/174643/file/PDF+BD+Report+crisis+and+rising+xenophobia.pdf>.

⁷⁷⁶ WHO, 'Positioning Health in the Post-2015 Development Agenda'. Geneva, October 2012, available at: <http://www.worldwewant2015.org/bitcache/7c4f4f265f3d2dfdfed54c06afee939039865522?vid=302852&dispositio n=attachment&op=download>. For a further, critical discussion of the relationship of the right to health and universal health coverage, see e.g. Ooms G., Latif L.A., Waris A., Brolan C.E., Hammonds R., Friedman E.A., Mulumba M. and Forman L., 'Is universal health coverage the practical expression of the right to health care?', BMC International Health and Human Rights 2014, 14:3, available at: <http://www.biomedcentral.com/1472-698X/14/3>.

⁷⁷⁷ EU Council, 'Council conclusions on the economic crisis and healthcare', Employment, Social Policy, Health and Consumer Affairs Council meeting, Luxembourg, 20 June 2014, §§ 2 and 15, available at http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/lsa/143283.pdf.

⁷⁷⁸ Mladovsky P., Srivastava D., Cylus J., Karanikolos M., Evetovits T., Thomson S. and McKee M., 'Health policy responses to the financial crisis in Europe', WHO and European Observatory on Health Systems and Policies, 2012, p. 1, available at: http://www.euro.who.int/_data/assets/pdf_file/0009/170865/e96643.pdf?ua=1.

of the scope, aim or purpose of measures, healthcare should, at all times, comply with the required standards of **availability, affordability, accessibility, acceptability and quality**⁷⁷⁹.

- It needs to be ensured that interventions into the healthcare system are not only quantitative and that **cost reductions should not be the only driver for healthcare reform**. Quality indicators that reflect performance in terms of adequacy and responsiveness to users, equity and equality, should also be included as policy measures⁷⁸⁰ to ensure benchmarking indicators in assessing the performance of a national healthcare system.
- Disadvantaged groups are more affected by austerity measures in the healthcare sector, given their already delicate position. Interventions with the right to health should, in no circumstances, interfere with the provision of basic health protection to vulnerable groups of people – in particular, **people with low-incomes, women, children, undocumented migrants, older people with multiple chronic conditions and people with disabilities**. In particular, Member States must ensure that all children have access to immunisation schemes and paediatric care, while all pregnant women are given access to pre-natal and post-natal care⁷⁸¹.

Even though healthcare is a Member State competence, the EU still 'has an important role to play in encouraging Member States to take action, to protect health systems and social protection mechanisms during times of crisis and even to render them more accessible'⁷⁸². Having already addressed the issue of universal access to healthcare and austerity with the European Commission⁷⁸³, the European Parliament should continue this dialogue to make sure that the EU plays a leading role, not only in 'seeking solutions to the exclusion of destitute EU citizens from access to healthcare'⁷⁸⁴, but also that, the important initiatives, such as the Horizon 2020,⁷⁸⁵ are steered towards providing universal health coverage for all persons on EU territory.

⁷⁷⁹ WHO and OHCHR, 'The Right to Health', Joint Fact Sheet, WHO/OHCHR/323, August 2007, available at: http://www.who.int/mediacentre/factsheets/fs323_en.pdf.

⁷⁸⁰ Mladovsky P., Srivastava D., Cylus J., Karanikolos M., Evetovits T., Thomson S. and McKee M., 'Health policy responses to the financial crisis in Europe', WHO and European Observatory on Health Systems and Policies, 2012, p. 28, available at: http://www.euro.who.int/_data/assets/pdf_file/0009/170865/e96643.pdf?ua=1.

⁷⁸¹ MdM Greece, 'Access to Healthcare in Europe in Times of Crisis and Rising Xenophobia: An overview of the situation of people excluded from healthcare systems', April 2013, p. 37, available at: <http://www.medecinsdumonde.org/content/download/14828/174643/file/PDF+BD+Report+crisis+and+rising+xenophobia.pdf>.

⁷⁸² MdM Greece, 'Access to Healthcare in Europe in Times of Crisis and Rising Xenophobia: An overview of the situation of people excluded from healthcare systems', April 2013, p. 37, available at: <http://www.medecinsdumonde.org/content/download/14828/174643/file/PDF+BD+Report+crisis+and+rising+xenophobia.pdf>.

⁷⁸³ European Parliament, Parliamentary questions, Question for written answer to the Commission, Hugue Bayet (S&D), 9 September 2014, available at: <http://www.europarl.europa.eu/sides/getDoc.do?type=WQ&reference=E-2014-006728&language=EN>, and Marlene Mizzi (S&D), 23 October 2013, available at: <http://www.europarl.europa.eu/sides/getDoc.do?type=WQ&reference=E-2014-007699&language=EN>.

⁷⁸⁴ MdM Greece, 'Access to Healthcare in Europe in Times of Crisis and Rising Xenophobia: An overview of the situation of people excluded from healthcare systems', April 2013, p. 37, available at: <http://www.medecinsdumonde.org/content/download/14828/174643/file/PDF+BD+Report+crisis+and+rising+xenophobia.pdf>.

⁷⁸⁵ European Commission, 'The EU Framework for Research and Innovation, Horizon 2020, 'Health, Demographic Change and Wellbeing'', undated, available at: <http://ec.europa.eu/programmes/horizon2020/en/h2020-section/health-demographic-change-and-wellbeing>.

12.4. Right to work

The right to work cannot be fully-achieved in non-functioning economies or economies in recession, as the availability of work is the first to be affected by an economic crisis⁷⁸⁶. In addition, high levels of unemployment create a rise in the levels of extreme poverty, which negatively impacts the realisation of a wide range of human rights⁷⁸⁷. In such a difficult environment, interventions are necessary and should help achieve two primary goals: facilitating the flexibility employers need to be able to respond to changes in the global market and remaining competitive, and facilitating new employment opportunities at a time when unemployment rates grow at an alarming pace. At the same time, the measures need to ensure that workers: earn a liveable wage, are provided with decent working conditions; have satisfactory levels of job security, i.e. protecting existing employment.

With the aim of achieving these ends, the following recommendations are being put forward:

- In the changing markets, **flexicurity** is an emerging concept aiming to provide the necessary flexibility of labour, which is needed to maintain competitiveness, whilst maintaining job security⁷⁸⁸. The European Commission has defined flexicurity as an **'integrated strategy to enhance, at the same time, flexibility and security in the labour market'** and has claimed that **the implementation of flexicurity measures will bring economic and social benefits, including enhanced productivity and smoother transitions within the labour market. However, despite its ubiquity, the meaning of flexicurity remains ambiguous⁷⁸⁹. Having that in mind, measures requiring flexibility of contracts should **not obstruct the guarantees of job security and decent working conditions**. No measure should go against internationally-recognised norms – most notably, the **EU and ILO standards⁷⁹⁰**, by making flexicurity more labour-friendly and making sure that measures come as a consequence of social dialogue with autonomous social partners⁷⁹¹.**
- The minimum wage is normally determined to ensure the minimum standards for a decent life for any worker. Any interference with the minimum wage needs to ensure that the it is **adequate and liveable, bearing in mind that 'wages are not the enemy of the economy but its motor, prompting growth and jobs⁷⁹²'**.
- As noted at the beginning of the present study, human rights are interrelated, interdependent and indivisible. As proof to that, the right to work, to a significant

⁷⁸⁶ International Federation for Human Rights and Hellenic League for Human Rights, 'Downgrading rights: the cost of austerity in Greece', December 2014, p. 18, available at: <https://www.fidh.org/IMG/pdf/grece646a2014.pdf>.

⁷⁸⁷ UN Economic and Social Council, Report of the United Nations High Commissioner for Human Rights, 7 May 2013, p. 5, and the sources cited therein, available at: http://www.un.org/ga/search/view_doc.asp?symbol=E/2013/82.

⁷⁸⁸ For more on flexicurity see European Commission, 'Towards Common Principles of Flexicurity: More and better jobs through flexibility and security', 2007, available at: <http://ec.europa.eu/social/BlobServlet?docId=2756&langId=en>.

⁷⁸⁹ Heyes J., 'Flexicurity in crisis: European labour market policies in a time of austerity', European Journal of Industrial Relations 19(1), 2013, p. 72, and the sources cited therein, available at: <http://ejd.sagepub.com/content/19/1/71.full.pdf+html>.

⁷⁹⁰ Including all ILO conventions and Recommendations, in particular Recommendation 202 on National Floors of Social Protection, available at: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:3065524.

⁷⁹¹ ETUC, 'Commission's Communication on "Towards Common Principles of Flexicurity: More and Better Jobs through Flexibility and Security"', October 2007, available at: <http://www.etuc.org/commission%E2%80%99s-communication-%E2%80%9Ctowards-common-principles-flexicurity-more-and-better-jobs-through>.

⁷⁹² ETUC and European Confederation of Trade Unions (CES), 'The Athens Manifesto', undated, available at: http://www.etuc.org/sites/www.etuc.org/files/Final_Manifesto_EN_reduced.pdf.

extent, depends on the previously-provided standard of education and healthcare. Hence, interventions in the field of the right to work need to be **co-ordinated with the measures in the field of education** to ensure the most favourable outcomes, given that the number of employable people in the labour market largely depends on past educational decisions⁷⁹³.

- There is a need for greater participation of social partners in dialogues to reinforce the legitimacy of labour market reforms. The Troika itself had 'confirmed that high-quality participation by the social partners and strong social dialogue, [at the EU and the] national level, are essential for the success of any reforms'⁷⁹⁴. The Commission has, from its part, recognised the need for better social dialogue and has appointed a Vice-President for the Euro and Social Dialogue. The Vice-President has the mission to consolidate, complement and simplify the EU intervention measures into the crisis, in order to make them more socially legitimate⁷⁹⁵. The Parliament has already requested that all labour market reforms need to be 'based on **reinforced co-ordination and social dialogue**' with a view to enhancing the EU's democratic legitimacy⁷⁹⁶. The Parliament should continue insisting on this request in relation to all such measures, in particular those being put before the Member States, either through the European Semester process, or by means of an MoU.

The European Parliament responses to austerity should be motivated by the fact that wage policy can be used to provide an **impetus for more dynamism** in the economy at large⁷⁹⁷. The issue of 'minimum standard of labour quality' was recently raised with the Commission⁷⁹⁸, and should be pursued further towards creating a **European minimum wage policy**. This could make a major contribution to the development of a new and more sustainable, wage-led growth model in Europe, giving concrete meaning to the abstract concept of "Social Europe"⁷⁹⁹.

Given that the reforms introducing flexibility have been seen as downgrading labour law standards, with the European Commission's encouragement⁸⁰⁰, the European Parliament should play an important role in predicating the importance of **systematic observance of**

⁷⁹³ European Commission, 'New skills and jobs in Europe: Pathways towards full employment', 2012, p. 39, available at: http://ec.europa.eu/research/social-sciences/pdf/new-skills-and-jobs-in-europe_en.pdf.

⁷⁹⁴ European Parliament, Resolution of 25 February on the European Semester for economic policy coordination: 'Employment and Social Aspects in the Annual Growth Survey 2014', (213/2158(INI)), §56, available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2014-0129+0+DOC+XML+VO//EN>.

⁷⁹⁵ President of the European Commission, 'Mission Letter to Valdis Dombrovskis, Vice-President for the Euro and Social Dialogue', 1 November 2014, available at: http://ec.europa.eu/commission/sites/cwt/files/commissioner_mission_letters/dombrovskis_en.pdf.

⁷⁹⁶ European Parliament, Resolution of 25 February on the European Semester for economic policy coordination: 'Employment and Social Aspects in the Annual Growth Survey 2014', (213/2158(INI)), §55, available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2014-0129+0+DOC+XML+VO//EN>.

⁷⁹⁷ Schulten T., 'Minimum wages in Europe under Austerity: WSI Minimum Wage Report 2012', ETUI Policy Brief No 5/2012, undated, available at: <https://www.etui.org/Publications2/Policy-Briefs/European-Economic-Employment-and-Social-Policy/Minimum-wages-in-Europe-under-austerity>.

⁷⁹⁸ European Parliament, Parliamentary questions, Question for written answer to the Commission, Sergio Gutiérrez Prieto (S&D), 22 December 2014, available at: <http://www.europarl.europa.eu/sides/getDoc.do?type=WQ&reference=E-2014-011170&format=XML&language=EN>.

⁷⁹⁹ Schulten T., 'European minimum wage policy: A concept for wage-led growth and fair wages in Europe', International Journal of Labour Research 2012, Vol. 4, Issue 1, p. 100, available at: http://apirnet.ilo.org/resources/social-justice-and-growth-the-role-of-the-minimum-wage/at_download/file1.

⁸⁰⁰ Lang C., Clauwaert S. and Schömann I., 'Working time reforms in times of crisis', working paper, ETUI, 2013, p. 5, available at: <http://www.etui.org/Publications2/Working-Papers/Working-time-reforms-in-times-of-crisis>.

social dialogue in defining and applying the concept of flexicurity⁸⁰¹. The Parliament may also continue efforts towards encouraging increased **investment in human capital**, 'especially retraining, skills upgrading and labour market needs-matching, including for persons working part-time or other flexible forms of employment and low-skilled workers⁸⁰²'. In any further effort, adhering 'to the principle of **gender mainstreaming** in all responses⁸⁰³' needs to be guaranteed, bearing in mind that the crisis might be seen to have 'undermined years of progress towards women's integration in the labour market and equality in paid work⁸⁰⁴'.

12.5. Right to a pension

With changing demography and requirements of sustainability of the pension system, it must be acknowledged that pension systems will continue to be reformed in the years to come. In undertaking such reforms it needs to be taken into account that fundamental rights protection of the right to an adequate pension, covers only the 'essence of this right⁸⁰⁵', while a specific, fixed amount of pension (apart from a minimum, guaranteed amount) is never guaranteed⁸⁰⁶. At the same time, Member States can be asked to embark on pension reforms as a result of the European Semester⁸⁰⁷, even though, depending on the movements of the unemployment rate, the reforms already adopted may not last to be fully implemented in their existing forms⁸⁰⁸. Nevertheless, a pension needs to reflect the contribution made towards it, as well as provide the necessary financial resources for **dignity in old age**. However, strengthening the link between contributions and benefits, will increase the gender-pay-pension gap which is already very high (39% on average in the EU in 2009⁸⁰⁹). Women contribute less because they earn less than men (the gender pay gap was 16.4% on average in the EU in 2012⁸¹⁰) but also because they often have to take time off to look after their children and ageing parents. Austerity measures that cut into the provision of childcare and eldercare have a direct impact on the employability of informal carers – mainly women, and their future pension rights. There are also issues of

⁸⁰¹ European Parliament resolution of 6 July 2010 on atypical contracts, secured professional paths, and new forms of social dialogue (2009/2220(INI)), available at: <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2010-0263&language=EN&ring=A7-2010-0193>.

⁸⁰² Council of the European Union, 'Flexicurity in times of crisis = Draft Council conclusions', SOC 374 ECOFIN 407, 28 May 2009, available at: <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2010388%202009%20INIT>.

⁸⁰³ Council of the European Union, 'Flexicurity in times of crisis = Draft Council conclusions', SOC 374 ECOFIN 407, 28 May 2009, available at: <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2010388%202009%20INIT>.

⁸⁰⁴ European Women's Lobby, 'The price of austerity – The impact on women's right and gender equality in Europe', October, 2012, available at: http://womenlobby.org/spip.php?action=acceder_document&arg=2053&cle=71883f01c9eac4e73e839bb512c87e564b5dc735&file=pdf%2Fthe_price_of_austerity_-_web_edition.pdf.

⁸⁰⁵ The ECtHR has held that the States have wide margin of appreciation when it comes to, inter alia, pensions. Therefore, 'reasonable and commensurate reductions in pensions' are acceptable, and will, as a rule, not constitute a violation of the right to property. See e.g. *Skorkiewicz v. Poland (dec.)*, no. 39860/98, 1 June 1999, available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-4630>. On the other hand, a total deprivation of ones entitlements will. See e.g., *Ásmundsson v. Iceland*, no. 60669/00, judgment of 12 October 2004, available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-67030>.

⁸⁰⁶ ECtHR, *Ásmundsson v. Iceland*, no. 60669/00, judgment of 12 October 2004 and case-law cited therein, available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-67030>.

⁸⁰⁷ European Parliament, 'European Parliamentary Week: Europe between austerity and growth', press release, 2 February 2015, available at: <http://www.europarl.europa.eu/news/en/news-room/content/20150201STQ18101/html/European-Parliamentary-Week-Europe-between-austerity-and-growth>.

⁸⁰⁸ Busch K., Hermann C., Hinrichs K. and Schulten T.I., 'Euro Crisis, Austerity Policy and the European Social Model – How Crisis Policies in Southern Europe Threaten the EU's Social Dimension', Friedrich Ebert Stiftung, February 2013, p. 21, available at: <http://library.fes.de/pdf-files/id/ipa/09656.pdf>.

⁸⁰⁹ Bettio F., Tinios P., Betti G., in collaboration with Gagliardi F. and Georgiadis T., 'The Gender Gap in Pensions in the EU', European Commission, DG Justice, 2013, p. 8, available at: http://ec.europa.eu/justice/gender-equality/files/documents/130530_pensions_en.pdf.

⁸¹⁰ Eurostat, 'Gender pay gap statistics', Data from February 2014, available at: http://ec.europa.eu/eurostat/statistics-explained/index.php/Gender_pay_gap_statistics#cite_note-1.

increased inequalities faced by older female workers who have taken time off work when their children were young because there were no affordable childcare facilities. Enhancing the link between contributions and benefits, without compensation for those who took time off to raise children, will result in higher pension gaps for mothers.

With these considerations in mind, the following recommendations are suggested:

- Pensioners, as a group, may be seen as a vulnerable group increasingly at risk of poverty in the face of limitations and restrictions imposed on their income – usually their only income. The national Governments, as well as the EU institutions, need to ensure that the imposition or promotion of measures that are expected to impact the right to a pension allow the **standard of living of pensioners** to be maintained at a decent and dignified level, which has been seen as in serious danger of significant degradation⁸¹¹.
- The **gender-pension gap** is already very high and will continue to increase. Thus, pension reforms need to seek to strengthen the link between the contributions made and the pension benefits, to also include gender equality measures which would compensate adequately for time spent off work caring for children and/or elderly parents.
- With rules being applied to pensions retroactively, and increasingly complicated systems, it is often difficult to predict when and how much of a pension a person may expect. That is why when introducing reforms into pension systems, Member States need to ensure the protection of legitimate expectations and **legal certainty and transparency**. In particular, when introducing new measures, longer periods of notice need to be provided.
- For many pensioners, remaining in the workforce is a matter of dignity as well as of earning an additional income. Retired persons who can and want to remain **active in the workforce** should not be discouraged from doing so by imperative measures, given that the pension reform alone cannot be sufficient to promote employment opportunities of older workers⁸¹², who should still be able to maintain at least a satisfactory level of their pension rights.

Towards achieving these goals, the European Parliament may continue to insist that the Commission and Member States ascertain that, in creating pension reforms, the requirements of **adequacy and sustainability** remain at the forefront⁸¹³, contributing to growth in Europe by **promoting active ageing**⁸¹⁴ through insisting on an environment where everyone is empowered to participate in society at all ages⁸¹⁵. The Parliament should

⁸¹¹ ECSR, Decision on the merits, 7 December 2012, *Federation of employed pensioners of Greece (IKA-ETAM) v. Greece*, Complaint No. 76/2012, §78 available at: https://www.coe.int/t/dghl/monitoring/socialcharter/complaints/CC76Merits_en.pdf.

⁸¹² OECD, 'Live longer, work longer', Executive summary, 2006, p. 11, available at: <http://www.oecd.org/employment/emp/36218997.pdf>.

⁸¹³ European Parliament, Resolution on an Agenda for adequate, Safe and Sustainable Pensions', (2012/2234(INI)), 21 May 2013, available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2013-0204+0+DOC+XML+V0//EN>.

⁸¹⁴ European Commission, 'White Paper: An Agenda for Adequate, Safe and Sustainable Pensions', COM(2012) 55 final, 16 February 2012, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0055:FIN:EN:PDF>.

⁸¹⁵ EuroHealthNet, 'healthy and active ageing', Bundeszentrale für gesundheitliche Aufklärung (BZgA), January 2012, p. 23, and the sources cited therein, available at: <http://www.healthyageing.eu/sites/www.healthyageing.eu/files/resources/Healthy%20and%20Active%20Ageing.pdf>

continue its efforts towards **multi-level governance** in this area⁸¹⁶, whilst **mainstreaming an active ageing** approach in the development of future policies. Any pension reform needs to remain under close scrutiny in the context of the Europe 2020 strategy⁸¹⁷.

12.6. Right of access to justice

Access to justice is the core right that ensures the enforcement of any other right, and as such, needs to be safeguarded and protected against damaging interferences. Increasing the cost of access to justice causes citizens and enterprises to avoid litigation – if not justified by the high value of the dispute. This, in turn, increases the risk involved in giving credit or concluding contracts with individuals and SMEs, preventing enterprise growth, which has been recognised in EU Justice policy⁸¹⁸. On the other hand, improving the performance of the judiciary would enhance economic growth by better securing property rights which give incentives to save and invest, and by improving the enforcement of contracts which encourage transactions by reducing opportunistic behaviour and transaction costs⁸¹⁹. At the same time, complex and inconsistent legislation causes uncertainty, which produces litigation and increases the rate of appeals, i.e. unclear rules may be interpreted differently by judges⁸²⁰. Hence, it is important to invest in legal certainty and judicial training to improve access to justice, and consequently ensure conditions for economic growth.

Moreover, it is typically the most disadvantaged groups of people that mostly need access to justice to enforce their already endangered rights. It is therefore crucial that they can access justice with provisions of adequate legal aid.

In order to safeguard and guarantee access to justice for all, the following recommendations are proposed:

- Many measures add to the costs of proceedings by introducing or increasing court fees or other costs. However, in order for justice to be accessible, it needs **to be affordable**: affordability is an essential parameter of what constitutes an effective justice system⁸²¹. Hence, national Governments must make sure that any fees introduced do not render access to a remedy too expensive, hence impeding the effectiveness of the justice system.

⁸¹⁶ European Parliament, 'Report on the European Innovation Partnership on active and Healthy Ageing', (2012/2258(INI)), 1 February 2013, § 68, available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A7-2013-0029+0+DOC+XML+V0//EN>.

⁸¹⁷ European Commission, 'White Paper: An Agenda for Adequate, Safe and Sustainable Pensions', COM(")!) 55 final, 16 February 2012, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0055:FIN:EN:PDF>.

⁸¹⁸ European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: The EU Justice Agenda for 2020 - Strengthening Trust, Mobility and Growth within the Union, COM(2014) 144 final, 11 March 2014, available at: http://ec.europa.eu/justice/effective-justice/files/com_2014_144_en.pdf.

⁸¹⁹ Palumbo G. et al., 'Judicial performance and its determinants: a cross-country perspective', OECD, 2013, available at: <http://www.oecd-ilibrary.org/docserver/download/5k44x00md5g8.pdf?expires=1420810569&id=id&accname=quest&checksum=6C107B046D4A95B72D5BC8E4375ADA28>.

⁸²⁰ Palumbo G. et al., 'Judicial performance and its determinants: a cross-country perspective', OECD, 2013, available at: <http://www.oecd-ilibrary.org/docserver/download/5k44x00md5g8.pdf?expires=1420810569&id=id&accname=quest&checksum=6C107B046D4A95B72D5BC8E4375ADA28>.

⁸²¹ European Commission, 'The 2014 EU Justice Scoreboard', 2014, p. 5, available at: http://ec.europa.eu/justice/effective-justice/files/justice_scoreboard_2014_en.pdf.

- Persons in vulnerable situations are, on the one hand, more likely to have their rights violated and, on the other, are less likely to have the skills to represent themselves and the resources to hire legal representatives. Therefore, **legal aid** needs to be ensured in case its absence may lead a person into a vulnerable situation without the protection of the justice system.
- Whenever the introduction of a judicial reform is being considered, an assessment should be made of the possible effect of its implementation on access to justice, e.g. increase in workload, prolongation of processing times or training of the judiciary in a particular topic. New measures need to be **accompanied by measures ensuring adequate and effective access to justice**. Member States should continue pursuit for 'the right balance between the need to restructure national justice systems and cutting unnecessary costs, and ensuring that remedies are accessible, in practice, to everyone, including through effective and independent non-judicial structures or innovative e-tools⁸²².

The right of access to justice is crucial for the full achievement of the principle of the **rule of law**, which is at the core of the European Parliament's concerns. Parliament needs to continue insisting on uncompromised compliance with this principle, by encouraging the Commission to continue its efforts towards: ensuring an **effective mechanism for regular assessment** of Member States' compliance with the fundamental values of the EU; a mechanism for **crisis situations with appropriate forms of intervention**; more efficient infringement proceedings; the possibility of sanctions in cases of systematic breaches⁸²³. **In this regard it is important to note that, following the Parliament's initiative**, the Commission has developed a Framework to Strengthen the Rule of Law to tackle the challenges identified to bring about a fully-functioning European area of justice⁸²⁴. The Framework is intended towards a structured exchange with the Member State where there are clear indications of a systemic threat to the rule of law. This is to be done in accordance with the following principles: focusing on finding a solution through **dialogue with the Member State** concerned; ensuring an objective and thorough **assessment of the situation**; respecting the principle of **equal treatment of Member States**; and indicating swift and concrete actions which could be taken to address the **systemic threat** and to avoid the use of Article 7 TEU mechanism⁸²⁵. Parliament needs to make sure that the Framework uses a combination of these methods, based on case-by-case analyses, to safeguard the rule of law in the EU.

The **right to legal advice** for suspected or accused persons in criminal proceedings, at the earliest appropriate stage, has been recognised as fundamental to safeguarding the fairness of proceedings⁸²⁶. Following the adoption of the Roadmap for strengthening

⁸²² FRA, 'Annual report 2013, Fundamental rights: challenges and achievements in 2013', p. 12, 2014, available at: http://fra.europa.eu/sites/default/files/fra-2014-annual-report-2013-0_en.pdf.

⁸²³ European Parliament, 'Resolution on Evaluation of justice in relation to criminal justice and the rule of law', (2014/2006(INI)), available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2014-0231+0+DOC+XML+VO//EN>.

⁸²⁴ European Commission, Communication from the Commission to the European Parliament and the Council: A new EU Framework to strengthen the Rule of Law, COM/2014/0158 final, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1406282379298&uri=CELEX:52014DC0158>.

⁸²⁵ European Commission, Communication from the Commission to the European Parliament and the Council: A new EU Framework to strengthen the Rule of Law, COM/2014/0158 final, § 4.2, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1406282379298&uri=CELEX:52014DC0158>.

⁸²⁶ Resolution of the Council of 30 November 2009 on a 'Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings', available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2009:295:0001:0003:en:PDF>.

procedural rights of suspected or accused persons in criminal proceedings⁸²⁷ the Parliament and the Council have adopted a Directive on the right to access a lawyer⁸²⁸. In addition, the Roadmap has set the adoption of an instrument on the right to access legal aid as one of the measures towards ensuring a fair trial in criminal proceedings. In times of crisis, the need for legal aid may be greater than ever, and a move towards a common policy granting legal aid in these, though limited, circumstances, may be the best demonstration of the **EU's lead role in protecting human rights**⁸²⁹. The European Parliament might consider taking this initiative a step further, promoting the **provision of legal aid** – not only in criminal proceedings⁸³⁰, but in any proceedings of essential importance to the individual concerned, for example asylum and foreclosure proceedings.

12.7. Freedom of expression and assembly

Freedom of expression is the pillar of European democracy and, as such, needs to be carefully safeguarded against any interference. Opinions expressed freely and in an undisturbed manner, individually, or in accord with others, as long as they do not interfere with rights and freedoms of others, need to be guaranteed and protected. The crisis has provoked (sometimes angry) outbursts, including, unfortunately, protests with casualties. The crisis has also brought about an unprecedented solidarity. In certain cases, protests led to dialogue and compromise between the Governments and social partners. However, while consequences of such limitations of the exercise of these freedoms are regrettable, freedoms of expression and assembly must not be limited as a response.

The following recommendations may be made in relation to safeguarding the freedoms of expression and assembly:

- In some Member States, freedom of expression is being increasingly limited by new, sometimes broadly-criticised, legislation⁸³¹. Freedom of expression, as well as freedom of peaceful assembly, **should not be limited**, especially not by new legislation which imposes general and questionable limits to their exercise.
- A number of incidents have been recorded, during the protests in response to austerity in general, or specific austerity measures in particular, with a number of instances of excessive use of police force. The authorities have a duty to enable the exercise of these freedoms, ensuring safety of the participants and bystanders alike, **without unnecessary and disproportionate use of force**.

⁸²⁷ Resolution of the Council of 30 November 2009 on a 'Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings', (2009/C 295/01), available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2009:295:0001:0003:en:PDF>.

⁸²⁸ Directive 2013/48/EU of the European Parliament and of the Council on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty, 22 October 2013, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:294:0001:0012:EN:PDF>.

⁸²⁹ Willems A., 'The UN General Assembly Resolution on Access to Legal Aid in Criminal Proceedings - an Example for Europe', Policy Brief, Issue 04/2013, Institute for European Studies Vrije Universiteit Brussel, May 2013, available at: http://www.ies.be/files/policy%20brief%20auke_FINAL.pdf.

⁸³⁰ In this regard, it is noteworthy to mention that the legislative procedure for the adoption of the Commission's proposal for a Directive on provisional legal aid for suspects or accused persons deprived of liberty and legal aid in European arrest warrant proceedings is currently ongoing in the European Parliament. See European Parliament, LIBE Committee, Procedure file 2013/0409 (COD), available at: [http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2013/0409\(COD\)&l=en](http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2013/0409(COD)&l=en).

⁸³¹ See e.g. discussion about the new Spanish legislation in section 9.4.2 of the present study.

- It is necessary to ensure accountability and responsibility of the individuals overstepping the boundaries of their duty, and bring them to justice, if necessary. All incidents of violence, in particular police violence, need to be **duly reported and investigated**, and the culprits sanctioned appropriately.

The economic crisis has shed light on, and often exacerbated, deep-rooted problems in the media environments of Europe. The European Parliament has already recognised the decline in press freedoms in the EU⁸³². At the same time, journalists are accepting online **media outlets as fora to 'counteract the contraction of the print sector and often frees** journalists from the restrictions and conflicting interests of large public or commercial institutions⁸³³. **In order to ensure that freedom of expression and the freedom of assembly** are adequately protected, the Parliament needs to keep reminding Member States about their obligations, from the EU Charter and other international instruments, and the paramount importance of these freedoms for a democratic society.

12.8. Monitoring compliance with fundamental rights

Securing compliance with the requirements of international and European human rights is closely connected to access to justice, and is key to the proper functioning of the system of protection of fundamental rights.

At the EU level, it is crucial that the obligation undertaken by the Lisbon Treaty – that of EU accession to the ECHR, is finally fulfilled. In addition, international standards should be complied with at all times, while the national supervision mechanisms need to be empowered. To that end, the following recommendations are put forward:

- The European Commission should find a way to bring to accord the findings of the CJEU⁸³⁴, from its recent opinion on **the EU accession to the ECHR**. To that end, the Commission should engage in further discussions and negotiations with the CoE, making sure that an accession agreement is carefully-tailored to accommodate the findings of the CJEU, whilst ensuring that its ratification adds value to the protection of fundamental rights in the EU⁸³⁵.
- In approaching the response to the crisis, regard must be made to the **international standards and findings** of international and European human rights

⁸³² European Parliament, 'Resolution on the situation of fundamental rights in the European Union (2012)', (2013/2078(INI)), 27 February 2014, available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT%20TA%20P7-TA-2014-0173%200%20DOC%20XML%20V0//EN>.

⁸³³ Dunham J., Csaky Zs., 'The European Economic Crisis has Coincided with a Decline in Press Freedom in the EU', London School of Economics Blog, 27 May 2013, available at: <http://blogs.lse.ac.uk/euoppblog/2013/05/27/europe-press-freedom/>.

⁸³⁴ The Court found that accession to the ECHR in accordance with the draft agreement with the CoE that it was not compatible with Article 6(2) TEU or with Protocol No 8 EU in that it was, inter alia, 'liable adversely to affect the specific characteristics and the autonomy of EU law, CJEU, Opinion 2/13, 18 December 2014, §258, available at: <http://curia.europa.eu/juris/document/document.jsf?text=&docid=160882&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=40247>.

⁸³⁵ Namely, following the Opinion, the concerns were voiced that, should the CJEU requirements therewith exposed, be fully met, the accession to the ECHR would bring no added value. See e.g. Douglas-Scott S., 'Opinion 2/13 on EU accession to the ECHR: a Christmas bombshell from the European Court of Justice' U.K. Constitutional Law Blog, 24 December 2014, available at: <http://ukconstitutionallaw.org/2014/12/24/sionaidh-douglas-scott-opinion-213-on-eu-accession-to-the-echr-a-christmas-bombshell-from-the-european-court-of-justice/> or Peers S., 'The CJEU and the EU's accession to the ECHR: a clear and present danger to human rights protection', EU Law Analysis Blog, 18 December 2014, available at: <http://eulawanalysis.blogspot.be/2014/12/the-cjeu-and-eus-accession-to-echr.html>.

monitoring mechanisms, in particular the UN Human Rights Committee, the UNCESCR, the CoE Commissioner for Human Rights, the ECtHR and the CJEU.

- **National protection mechanisms** need to be encouraged and empowered to tackle issues of fundamental rights in a competent, assertive and timely manner, while compliance with their findings cannot be compromised at any time. A survey has indicated a need for further action by many equality bodies themselves, to enhance their effectiveness, even in times of economic and financial crisis. In particular, they are challenged to be more strategic in their work, more systematic in taking account of diversity, and to engage with a wider range of stakeholders⁸³⁶.
- The Lisbon Treaty considers participatory democracy as a fundamental democratic principle of the EU and proposes ways to organise dialogue with '**representative associations and civil society**'. This dialogue is a concrete tool to strengthen the relationship between public decision-makers and civil society organisations, and is complementary to social dialogue⁸³⁷. **Civil society organisations** should be empowered to monitor application of fundamental rights in Member States – in accordance with the Lisbon Treaty and the International Covenants, and report back **to the Commission's Vice-President** for fundamental rights and the European Parliament.

A true fundamental rights culture requires the **regular and independent monitoring** of how relevant legislation is applied⁸³⁸. It might therefore be argued that such monitoring is best left to be performed by existing monitoring institutions. For example, EU Ombudsman could be of significance in evaluating the participation of the European Commission and the ECB in the Troika. So far, the Ombudsman has held that pursuing complex economic, political and constitutional issues in the context of austerity could risk taking it outside of its mandate⁸³⁹. It should, however, be emphasised that its mandate is to deal with complaints about cases of maladministration by EU institutions, and there have been arguments that such instances have occurred through Troika involvement to resolve the economic and financial crisis⁸⁴⁰.

⁸³⁶ Equinet, 'Equality Bodies: Current Challenges', October 2012, p. 22, available at: http://www.equineteurope.org/IMG/pdf/Current_Challenges_Perspective_MERGED_-_EN.pdf. Thus, for example, the Irish Ombudsman has been faced with a 16% reduction in resources and an increase in volume of complaints, which in turn lead to the backlog of work. Alarmed by such a situation, the long awaited Ombudsman Amendments Act was adopted to respond to these and some previously identified challenges. The amendments significantly extended the list of the 'reviewable agencies', and thus the competencies of the Ombudsman. However, the amendments have also seen to some of the burden of the proceedings being transferred from the individual concerned and the institution of the Ombudsman, to the institution under review. See, Office of the Ombudsman, 'Delivering Fairness and Transparency: Speech by the Ombudsman and Information Commissioner, Tyndall P., 19 February 2014, available at <https://www.ombudsman.gov.ie/en/News/Speeches-Articles/2014/Fairness-and-Transparency.html>.

⁸³⁷ Social Platform, 'How to establish an effective dialogue between the eU and civil society organisations', February 2012, and the sources cited therein, available at: http://www.socialplatform.org/wp-content/uploads/2013/07/20100201_SocialPlatform_EffectiveCivilDialogue.pdf.

⁸³⁸ FRA, 'Annual report 2013, Fundamental rights: challenges and achievements in 2013', p. 12, 2014, available at: http://fra.europa.eu/sites/default/files/fra-2014-annual-report-2013-0_en.pdf.

⁸³⁹ EU Ombudsman, Decision of the European Ombudsman closing his inquiry into complaint 973/2012/ANA against the European Commission, available at: <http://www.ombudsman.europa.eu/en/cases/decision.faces/en/12113/html.bookmark>.

⁸⁴⁰ See e.g. EPSU, 'Water movement lodges complaint with the European Commission – Maladministration', undated, available at: <http://www.epsu.org/a/9348>. See also, The Greens in the European Parliament, 'Euro Crisis response: Flawed role of 'Troika' the focus of EP inquiry', 13 November 2013, available at: <http://www.greens-efa.eu/euro-crisis-response-10897.html>.

Similarly, the CJEU has also taken a cautious approach to the application of the EU Charter to austerity measures⁸⁴¹, bringing into question whether the Charter applies to the MoUs at all⁸⁴². However, the CJEU, as the guardian of legality of acts adopted by the EU institutions, might play a more prominent role in an attempt to bring together the two sets of standards – the EU legal environment and the international human rights obligations⁸⁴³, in particular in view of its competence to review the legality of acts adopted by the EU institutions that appear to infringe fundamental rights.

From its end, however, the **European Parliament** needs to remain at the service of citizens, through petitions, but also by remaining on top of issues, promptly responding to them, and calling the Commission to action, whenever that is deemed necessary. The inquiry into Troika operations⁸⁴⁴, in 2014, was a welcome step forward. However, **supervision over Troika performance** needs to continue until the moment the Parliament is satisfied that it is fully compliant with the requirements of the protection for fundamental rights of the EU citizens.

⁸⁴¹ Hence, for example, in the case of *Pringle*, the CJEU ruled that, 'in view of the Treaty structure of the ESM Treaty, nation states which signed the ESM Treaty under international law outside the Union legal order were not in any case 'implementing' EU law. CJEU, *Thomas Pringle v. Government of Ireland*, , C-370/12, Judgment of the Court (Full Court) of 27 November 2012, available at: http://curia.europa.eu/juris/document/document.jsf?jsessionid=9ea7d0f130de67fd69debf274500842a8d283fc6e920_e34Kaxilc3eQc40LaxqMbN4Obx0Pe0?text=&docid=130381&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=480613. Similarly, 'in a Romanian reference for a preliminary ruling concerning the implementation of an MoU signed with the EU, the IMF and the World Bank, the CJEU found that the nexus for the enforcement of EU law did not exist'. CJEU, *Corpul Național al Polițiștilor v. Ministerul Administrației și Internelor (MAI), Inspectoratul General al Poliției Române (IGPR) and Inspectoratul de Poliție al Județului Alba (IPJ)*, C-434/11, Order of the Court (Sixth Chamber) of 14 December 2011, available at <http://curia.europa.eu/juris/document/document.jsf?text=&docid=118301&pageIndex=0&doclang=FR&mode=lst&dir=&occ=first&part=1&cid=481521> (only in French and Romanian). As per Fischer-Lescano A., 'Human Rights in Times of Austerity Policy: The EU institutions and the conclusion of Memoranda of Understanding', ETUI, February 2014, p. 8, available at: [http://www.etui.org/content/download/13817/113830/file/Legal+Opinion+Human+Rights+in+Times+of+Austerity+Policy+\(final\).pdf](http://www.etui.org/content/download/13817/113830/file/Legal+Opinion+Human+Rights+in+Times+of+Austerity+Policy+(final).pdf).

⁸⁴² Fischer-Lescano A., 'Human Rights in Times of Austerity Policy: The EU institutions and the conclusion of Memoranda of Understanding', ETUI, February 2014, p. 8, available at: [http://www.etui.org/content/download/13817/113830/file/Legal+Opinion+Human+Rights+in+Times+of+Austerity+Policy+\(final\).pdf](http://www.etui.org/content/download/13817/113830/file/Legal+Opinion+Human+Rights+in+Times+of+Austerity+Policy+(final).pdf).

⁸⁴³ Report of the Secretary General of the Council of Europe, 'State of democracy, human rights and the rule of law in Europe', SG(2014)1 – final, May 2014, available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016800c4462>.

⁸⁴⁴ European Parliament resolution of 13 March 2014 on the enquiry on the role and operations of the Troika (ECB, Commission and IMF) with regard to the euro area programme countries, (2013/2277(INI)), §§ 66-67, available at: <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2014-0239&language=EN&ring=A7-2014-0149>.

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- Maxime Cerutti, Business Europe
- Tamas Kadar, EQUINET – The European Network of Equality Bodies

ANNEX - OVERVIEW OF RELATED STUDIES

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ISBN: 978-92-823-6599-1

DOI: 10.2861/26562