

Chapter 8

The Global Financial Crisis: Impact on Labour and Employment Law

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This paper examines the negative social effects of the GFC, with a focus on the impact of the crisis on labour and employment laws and, conversely, how such laws may be utilised to mitigate or ameliorate the negative consequences of the crisis, and of related retrenchment or austerity programmes.

Introduction

It is clear that the 2008 GFC is continuing to have major repercussions for the world economy, and for labour markets. Studies of the impact of the crisis on developing countries (for instance, the multi-country study coordinated by the UK Overseas Development Institute)² have shown that, contrary to initial assumptions, developing countries have not been shielded from the financial crisis. Oxfam has identified the ripple effect of the ‘financial earthquake’ affecting the banking centres of Europe and North America, as having been transmitted to the ‘real economies’ of poor countries along a number of fault lines, the ones of particular importance to the labour market and employment outcomes being: falls in (export) demand, in gross domestic product (GDP) and in domestic demand and consumption, leading to declining output, employment, enjoyment of rights and increased competition in the informal economy.³

With regard to industrialised economies, it was already the case prior to the GFC that the ‘grand social bargain’ in many, wherein ‘economic liberalization was embedded in social community’⁴ was already beginning to unravel for a number of reasons: market economies, such as those within the OECD, found that their welfare states and systems of social citizenship and labour rights had come under increased pressure since the 1990s, with challenges to their sustainability becoming more acute in the wake of the current global economic crisis.

Even prior to the current crisis, international institutions expressed concerns that the social dimension of trade liberalisation was insufficiently developed. A key message of the 2004 report of the World Commission on the Social Dimension of Globalization (an enquiry commissioned by the

1 Diamond Ashiagbor, Professor of Labour Law, School of Oriental and African Studies, University of London.

2 Overseas Development Institute, ‘The global financial crisis and developing countries Phase 2 synthesis’, Working Paper 316, London: ODI, March 2010 (study of Bangladesh, Bolivia, Cambodia, Democratic Republic of Congo, Kenya, Mozambique, Ethiopia, Tanzania, Uganda and Zambia).

3 Duncan Green, Richard King and May Miller-Dawkins, ‘The Global Economic Crisis and Developing Countries’, Oxfam GB and Oxfam Australia, 28 May 2010, 9. In terms of employment effects of the crisis, the ODI study noted these were mostly apparent in garment and mining sectors: ODI, n 2 above, vii.

4 John Gerard Ruggie, ‘Taking Embedded Liberalism Global: The Corporate Connection’, Institute for International Law and Justice Working Paper 2003/2, New York University School of Law.

International Labour Organization – ILO), concerned the need for institutions to govern or ‘tame’ globalisation and to ensure a more equitable distribution of its benefits, since ‘[g]lobal markets have grown rapidly without the parallel development of economic and social institutions necessary for their smooth and equitable functioning’.⁵

The World Commission highlighted the need for *adjustment mechanisms*, in both developed and developing countries. In the former, industrialised nations, there is the recognition that greater market access for developing country exports may impose high social costs on developed country workers, necessitating adjustment assistance to affected workers.⁶ In the latter, there is a need for donors and international and regional financial institutions to support nascent national social protection systems in order to ensure a fairer distribution of the gains from globalisation.⁷

Within some states, and within some instances of regional market integration (such as the EU) interventionist states have in the past been able to engage in redistribution or trade adjustment – to ensure the losers from globalisation are compensated. Such trade adjustment mechanisms may take the form of redistribution, education policies or labour market policies – such as policies insuring workers against adverse events,⁸ for instance, job security regulation, to make it harder for employers to dismiss workers; and unemployment benefits, which grant workers income replacement during unemployment.

However, such adjustment mechanisms are lacking at the global level, from regional trade groupings of less industrialised nations, and from the individual developing states themselves. Clearly, developing countries have never enjoyed adjustment mechanisms of the sort existing in industrialised states. They do not have the ‘privilege of cushioning the adverse domestic effects of market exposure in the first place [since the] majority lack the resources, institutional capacity [and] international support’.⁹

Accordingly, in examining the social impact of the current crisis, this chapter will take into account the differing starting points of industrialised and developed nations and regions – their differing ability to make use of labour and employment law to cushion the impact of trade and the opening of markets, and their divergent responses to the GFC. The chapter will examine three main areas of labour market regulation:

- labour and employment law in times of austerity;
 - the impact of the GFC on individual employment law;
 - the impact of the GFC on collectively determined terms and conditions;
- the right to equality in times of austerity; and
- the use of human rights norms in times of crisis.

Labour and employment law in times of austerity

In 2012, the ILO noted that all major forecasters had reduced projected global growth rates, with a high risk of a further slowdown in 2013. The result is a high risk of ‘little or no improvement in labour market conditions in most countries and deterioration in those experiencing recession or effective stagnation’.¹⁰ This has led to a rapid rise in unemployment most marked, for example, among the under-25s in the EU. There is an important interconnection between industrialised and developing economies: the former, which account for 52 per cent of global output, are dragging down world growth and the performance of emerging and developing countries.¹¹

Addressing the European Parliament on 14 September 2011, the ILO Director-General Juan Somavia noted:

5 World Commission on the Social Dimension of Globalization (WCSGD), *A Fair Globalization: Creating Opportunities For All*, ILO 2004, xi. Hamish Jenkins, Eddy Lee and Gerry Rodgers, ‘The quest for a fair globalization three years on: Assessing the impact of the World Commission on the Social Dimension of Globalization’, International Institute for Labour Studies/ILO Discussion Paper Series No 175, 2007.

6 See n 5 above, 82.

7 *Ibid.*, at 109.

8 Marion Jansen and Eddy Lee, *Trade and employment: Challenges for policy research*, ILO/WTO, 2007, 7–10 and 55–80.

9 John Gerard Ruggie, ‘Taking Embedded Liberalism Global: The Corporate Connection’, Institute for International Law and Justice Working Paper 2003/2, New York University School of Law, 2.

10 ILO, Governing Body 316th Session, Geneva, 1–16 November 2012, ‘Global economic prospects and the Decent Work Agenda’, para 1.

11 *Ibid.*

‘Respect for fundamental principles and rights at work is non-negotiable: not even in times of crisis when questions of fairness abound. This is particularly important in countries having to adopt austerity measures. We cannot use the crisis as an excuse to disregard internationally agreed labour standards.’

However, many industrialised nations, in particular within the EU, are making large-scale changes to labour law regimes on the grounds that making labour markets more ‘flexible’ is one of the best responses to the crisis.¹² In the EU context, at least, this trend towards policies of labour market flexibilisation – for the most part, policies of labour law deregulation – has been of long standing. But the dilution or reform of labour standards has taken on a perceived urgency in the context of economic crisis.

The impact of the GFC on individual employment law

The GFC is influencing regulation of the employment relationship, in particular in terms of:

- pressures on the regulation of employment relationships through the contract of employment;
- greater informality of labour markets and employers’ increasing use of non-standard, flexible labour or precarious labour;
- the gendered nature of non-standard labour; and
- national and international policies and regulation to combat precarious work.

There is a symmetry between the impact the GFC is having on individual and collective labour law within industrialised countries (which are experiencing the crisis predominantly as a sovereign debt crisis) and the effect of structural adjustment programmes implemented by the IMF and the World Bank on labour markets in developing states from the 1970s onwards. The ‘Washington Consensus’ underpinning the structural adjustment programmes promoted, inter alia, trade liberalisation, or lifting import and export restrictions, and privatisation of state-owned industries and resources. The impact on employment rights was negative, given that the orthodox economic thinking underpinning structural adjustment policies tended to view labour market institutions and protective regulations as ‘rigidities’, which need to be deregulated to make markets more efficient.

A similar pattern can be seen in the responses to the current crisis. Taking the EU as a regional case study, governmental – and supranational – responses to the current crisis, in particular the crisis in sovereign debt, have placed labour and employment law centre-stage in the array of policy mechanisms. In particular, as Simon Deakin notes ‘[r]adical, deregulatory labour law reforms have been demanded of EU member states receiving financial support from the financial “Troika” of the European Commission, European Central Bank and IMF’.¹³

Catherine Barnard identifies the direct and indirect impact on labour law of the various responses to the crisis – the Euro Plus Pact of March 2011, the ‘bailouts’ granted to Greece, Ireland and Portugal and the accompanying Memoranda of Understanding (MoU), and the European financial stabilisation mechanism – as effectively amounting to EU or EU/IMF-sanctioned deregulation of employment rights at national level.¹⁴ For example, Ireland committed itself in the MoU governing its bailout to reducing its minimum wage by one euro an hour. Portugal committed itself to cuts including reductions in bonus salary payments for civil servants and pensioners, to reductions in the generosity of severance payments, and placing restrictions on dismissal rights and compensation for dismissals.¹⁵

Elsewhere in Europe, other countries have similarly reformed or considered a loosening of restrictions on termination of employment at the initiative of the employer.¹⁶ A review of the regulation of collective dismissals for economic reasons in 125 countries, including changes in the obligations

12 EC, Communication on ‘An Agenda for new skills and jobs: A European contribution towards full employment’ COM(2010) 682 final.

13 Simon Deakin, ‘Editorial: The Sovereign Debt Crisis and European Labour Law’ (2012) *Industrial Law Journal*, 251–253.

14 Catherine Barnard, ‘The Financial Crisis and the Euro Plus Pact: A Labour Lawyer’s Perspective’ (2012) *Industrial Law Journal*, 98–114.

15 *Ibid.*, 110–111. See also Catherine Barnard, ‘“Equality, Solidarity and the Charter in time of crisis” a case study of dismissal’ paper presented at the conference on ‘Resocializing Europe and the Mutualization of Risks to Workers’ 18–19 May 2012, University College London.

16 David Tajgman, Catherine Saget, Natan Elkin and Eric Gravel, ‘Rights at work in times of crisis: Trends at the country level in terms of compliance with international labour standards’, ILO Employment Sector, Employment Working Paper No 101(2011), 6.

of enterprises showed that eight countries adopted more flexible regulations, while six countries introduced new obligations for enterprises.¹⁷

The impact of the GFC on collectively determined terms and conditions

On the collective side: the three above-mentioned countries subject to the EU economic adjustment programme – Greece, Ireland and Portugal – have contracted sharply since 2008 leading to increased unemployment. Regular reviews by the Troika linked to the release of bailout funding have called for increased efforts to reduce budget deficits alongside major structural reforms, including the reform of pay determination systems and employment protection legislation.¹⁸ For instance, in Ireland, the Registered Employment Agreements or Employment Regulation Orders – collective agreements in the agricultural, catering, construction and electrical contracting sectors – have been repealed.¹⁹

More broadly, alongside such governmental and regulatory responses to the GFC – by means of wages policies, adjustments to minimum wages, dismissal protection – the crisis is interacting with the steady decades-long global decline in trade union membership and in the coverage of collective agreements.²⁰ While orthodox economic theory assumes that trade unions tend to raise wages, and in so doing raise unemployment, one can, on the contrary, find strong (new institutionalist) economic arguments for labour market institutions, such as collective bargaining systems – for instance, as a form of regulation to make up for market failure which, together with labour law, can reduce transaction costs, provide stability in long-term relationships and facilitate a higher degree of functional flexibility and acceptance of technological change.²¹ And in the context of crisis, as Hayter et al note: ‘well-developed industrial relations institutions can be a critical resource for steering a country, a sector and/or an enterprise through an economic crisis and managing change’.²² Ironically, however, a key effect of the GFC has been the sharp decline of such cooperation or corporatism, with the ‘collapse of consensus approaches to social and economic policy making’, seen most sharply in Ireland.²³

Nevertheless, there are some collective bargaining strategies and resistance to austerity programmes. There is also a role for international labour standards, in particular in the ILO that, significantly, does not share the deregulatory discourse of some nation states or supranational bodies. While some governments unilaterally reformed collective bargaining arrangements at the height of the economic crisis, the ILO argues that reversing those decisions and providing policy support for collective bargaining would be key to recovery.²⁴

The right to equality in times of economic crisis and austerity

Some commentators, such as Brendan Barber of the UK Trades Union Congress (TUC), have characterised the current recession as ‘equal opportunities recession’²⁵ in the sense that job losses in sectors where men predominate, such as manufacturing and construction, are balanced by job losses in retail and hospitality, where more women work. However, the picture is more complex both

17 Angelika Muller, ‘Employment protection legislation tested by the economic crisis: A global review of collective dismissals for economic reasons’ ILO Dialogue in Brief, No 3, September 2011.

18 ILO, Governing Body 316th Session, Geneva, 1–16 November 2012, ‘Global economic prospects and the Decent Work Agenda’, para 9.

19 See n 14 above, 111.

20 See statistics on trade union density and collective bargaining coverage in OECD countries and in developing countries in Susan Hayter, Tayo Fashoyin and Thomas A Kochan, ‘Review Essay: Collective Bargaining for the 21st Century’ (2011) *Journal of Industrial Relations*, 225–247; David G Blanchflower, ‘A Cross-Country Study of Union Membership’, IZA Discussion Paper No 2016, March 2006.

21 For further analysis of the efficiency-enhancing effect of labour market institutions see, Diamond Ashiagbor, *The European Employment Strategy: Labour Market Regulation and New Governance* (OUP 2005) 48–51.

22 See n 20 above, 241.

23 Oireachtas (Irish Parliament) Library and Research Service, ‘Trade unions, collective bargaining and the economic crisis: where now?’ Spotlight No 4, 2011, available at www.oireachtas.ie/parliament last accessed 27 March 2013.

24 ILO Newsroom, Comment and analysis, Weakening collective bargaining hurts recovery, 12 September 2012, available at www.ilo.org/global/about-the-ilo/newsroom/comment-analysis/WCMS_189517/lang-en/index.htm last accessed 27 March 2013.

25 Quoted in T Hogarth, D Owen, L Gambin, C Hasluck, C Lyonnette and B Casey, ‘The equality impacts of the current recession’, Warwick Institute for Employment Research, University of Warwick / Equality and Human Rights Commission Research Report 47, EHRC, 2009, 31.

between the genders (especially in developing economies), and across different equality groups in both industrialised and developing economies.

The GFC is having a major impact, globally, on labour market equality in at least three respects. First, As ILO Director-General Juan Somavia noted, '[e]conomically adverse times are a breeding ground for discrimination at work and in society more broadly.'²⁶ The common thread can be described as one of retrenchment: a withdrawal into prioritising work for those groups traditionally perceived to form the 'core' of the labour market, as seen, for example, in attitudes that give preference to male employment in order to support the male breadwinner;²⁷ or the hardening of attitudes towards migrants, leading to reduced employment or migration opportunities, increased xenophobia, deterioration in working conditions and even violence.²⁸ Studies show a growing perception that employers will no longer be able to afford the 'luxury' of pursuing 'diversity strategies' and that this will limit or diminish the gains made by women and other groups in the labour market in general and the corporate world in particular.²⁹

Secondly, there has been a differential impact of recession on different groups. Among settled communities, there is evidence to show that ethnic minority groups enter unemployment earlier during a recession and exit it later than majority groups.³⁰ Studies of previous crises show a disproportionate impact on the employment of women in developing countries, and this pattern is repeated in the current crisis.³¹ In particular in developing countries, women are more likely to be engaged in 'vulnerable' or 'precarious' employment; work that is in the informal economy, not within the embrace of employment protection laws applicable to employment in the formal economy. In industrialised countries, the story is more likely to be one of female work in the public sector being vulnerable to austerity measures. For example, evidence from the US and the UK suggests that, following an initial period at the start of the current recession when the first wave of job losses hit the private sector, women (and, in the UK, ethnic minority groups) who are disproportionately employed in the public sector are experiencing a second wave of job losses as a result of spending cuts in the public sector.³²

Thirdly, in terms of monitoring and enforcement: in the context of austerity measures, the budgets of labour administration and inspection services and of the specialised bodies that deal with non-discrimination and equality, are at risk. Such cuts may 'compromise the ability of those institutions to address what could be counted among the worst social consequences of the economic crisis'.³³

To what extent do regulatory and policy options to inequality in the labour market alter in times of economic crisis? What is the response of equality law and policies in times of economic crisis given competing justifications for equality and diversity? To what extent do arguments for equality and diversity need to be differently constructed and understood in conditions of economic crisis?

One response, as witnessed for instance in the EU, begins from the assumption that labour rights and standards, and in particular, equality rights, can be an *input* into economic growth and efficiency rather than a *drag* on growth and prosperity. Viviane Reding, Vice-President of the European Commission and in charge of Justice, Fundamental Rights and Citizenship, states:

'The economic case for getting more women into the workforce and more women into top jobs in the EU is overwhelming... We can only reach our economic and employment goals by making full use of all our human resources – both in the labour market as a whole and at the top. This is an essential part of our economic recovery plans.'

This was the perspective adopted within the European Commission's report on progress made during 2011 on equality between women and men, part of the Commission's broader report on the application

²⁶ ILO Press Release accompanying the 2011 ILO report on Equality at work.

²⁷ ILO, 'Equality at work: The continuing challenge', *Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work*, ILO, 2011, paras 17–18.

²⁸ *Ibid*, paras 13–14.

²⁹ 'Recession Turns Heat up for Men', *Financial Times*, 19 April 2009.

³⁰ Equality and Human Rights Commission / Government Equalities Office, Monitoring update on the impact of the recession on various demographic groups, December 2009, 23.

³¹ See n 27 above, para 18.

³² Eileen Appelbaum, 'Women's Employment in Recession and Recovery' Center for Economic and Policy Research, available at www.cepr.net last accessed 27 March 2013; Hogarth et al, see n 25 above.

³³ See n 27 above, para 40.

of the EU Charter of Fundamental Rights.³⁴ The (economic) reasoning here is that fostering a labour market favourable to social integration, and increasing labour force participation of groups previously excluded because of discrimination will assist in meeting the goals of the EU integration project, such as the attainment of a high level of employment and social protection, raising the standard of living and the quality of life, the achievement of economic and social cohesion and solidarity.³⁵

However, this positive attitude to labour rights is greatly at odds with the discourse (and action) elsewhere within the EU institutions – indeed, elsewhere within the European Commission itself – as can be seen in the response of the Troika (which includes the European Commission) to the eurozone crisis.

The positive attitude is also at odds with the approach of governments of EU Member States – even where they are not subject to demands to deregulate labour law as a condition of receiving financial support. Other states do not adopt such a benign perspective towards labour rights, least of all equality rights. In the UK context, the Conservative–Liberal Democrat coalition government (May 2010 to date) has initiated a review of labour and employment law, a key feature of which is a push to reduce ‘red tape’, namely, regulations perceived to be an exogenous interference with business and labour market flexibility.³⁶ Equality rights are not immune from this cull of labour rights, in this desire to reduce ‘burdens’ on business. For example, the Equality Act 2010, drafted and enacted by a previous Labour government, came into force at the same time as the new coalition government came into power. The coalition government declined to bring into force certain sections of this statute, and also abolished, in April 2011, a requirement under the Act that had imposed a duty on public bodies to conduct ‘equality impact assessments’ in order to analyse the potential or actual effects of proposed policy on disability, ethnic minority, gender, faith, age, transgender and maternity groups.

A contrary approach is to seek to rely on equality laws to challenge the government’s economic policies, where it is argued that austerity measures have a particularly adverse impact on women’s labour market experience, or those of other disadvantaged (ethnic) minority groups. In the UK, the Race Relations (Amendment) Act 2000 introduced a statutory duty to promote race equality, namely, to take proactive steps to eliminate unlawful racial discrimination, to promote equal opportunities and promote good relations between people from different racial groups. Subsequently, public sector equality duties covering disability and gender were introduced on similar lines. The Equality Act 2010 replaced these specific duties with a new single equality duty covering race, sex, disability, sexual orientation, religion and belief, age, gender reassignment, pregnancy, and maternity. In 2010, the Fawcett Society, an NGO that campaigns and lobbies for equal pay and equality between men and women, applied for judicial review of the newly formed coalition government’s austerity measures, challenging the 2010 emergency budget on the ground that it would have a disproportionately negative impact on women.³⁷ The claim was that the government was in breach of its obligations to undertake a ‘gender impact assessment’ to assess whether its budget proposals would increase or reduce inequality between women and men, given the contention that 72 per cent of the proposed public sector cuts would be met from women’s income, as would £6bn of the £8bn savings generated in one year. More specifically, the reasoning behind this use of equality law to challenge the gender impact of the GFC is as follows:

‘This budgetary austerity is clearly made possible because of the state’s role as employer. In addition to the direct impact of these measures on public sector employees, the majority of whom are women, child welfare benefits were frozen, Sure Start maternity grants limited to one child and child tax credits significantly reduced. The Women’s Budget Group issued an analysis of the emergency budget, highlighting: “Low income mothers, who are the managers and shock-absorbers of poverty, will be among the main losers. Women from black and minority ethnic

34 EC, Report on the Application of the EU Charter of Fundamental Rights, Brussels, 16.4.2012 COM(2012) 169 final.

35 See Preamble to the Framework Directive, Directive 2000/78 Council Directive 2000/78 establishing a general framework for equal treatment in employment and occupation (on religion or belief, disability, age, sexual orientation), Official Journal L 303, 2 December 2000, 16–22.

36 Her Majesty’s Treasury and Department for Business Innovation and Skills, The Plan for Growth, March 2011, available at http://cdn.hm-treasury.gov.uk/2011budget_growth.pdf last accessed 27 March 2013.

37 Fawcett Society, ‘Fawcett Launches Legal Challenge to Government Budget’ Press Release, 1 August 2010, available at www.fawcettsociety.org.uk/index.asp?PageID=1165 last accessed 27 March 2013.

groups will be particularly hard hit, as 40 per cent of them live in poor households.’³⁸ The judicial review action was ultimately unsuccessful owing, it has been claimed, to ‘a compelling case for granting judicial review [having been] eclipsed by a desire to maintain political stability in the face of the economic crisis’.³⁹

The use of human rights norms in times of economic crisis

In addition to equality discourse, fundamental (human) rights may also serve as a means of challenging reforms that seek to retrench labour and social rights.

A set of observations about the role of human rights in labour markets, made just before the emergence of the current GFC,⁴⁰ has gained deeper resonance in the aftermath of the crisis. It is arguable that neoliberal economic policy has undermined the welfare state in those industrialised countries that had developed institutions of social citizenship to ‘soften’ the impact of the market on workers. Laws that protected and promoted trade unions, for instance, have been undermined as the economy is refashioned. As traditional vehicles for social rights, such as the welfare state and collective bargaining, have declined, one can note that ‘legal and constitutional mechanisms are increasingly being used to assert social claims’.⁴¹ This has, in turn, given rise to new discourse of labour rights and of the relationship between social rights and the market.⁴²

No two commentators on the subject provide an identical version of the evolving treatment of labour rights as human rights.⁴³ But a common starting point is the taxonomy developed by Marshall, of a three tier classification of rights of ‘citizenship’ into three generations: civil – liberty of the person, freedom of speech, thought and faith, the right to own property; political – the right to participate in the exercise of political power; and social or socio-economic; the latter seeming to offer a way to demonstrate the validity of workers’ claims.⁴⁴ Traditionally, the post-war era in industrialised countries witnessed the implementation of social rights via collective decisions by the political machinery of the state as to allocation of available resources.

More recently, the international community has placed emphasis on an identifiable group of ‘core labour standards’, which, given the discourse on the ‘indivisibility’ of human rights, would suggest that socio-economic rights may be justiciable. Such ‘core’ social rights are most prominently to be found in the ILO’s 1998 Declaration of Fundamental Principles and Rights at Work. The EU’s 2000 Charter of Fundamental Rights also offers a prominent example of the characterisation of labour rights as fundamental rights at the international and supranational level.⁴⁵

Taking the EU as a case study, it would appear that human rights norms developed outside the EU framework – for instance, the Council of Europe’s European Social Charter, and the ILO’s international labour standards – may be a more effective bulwark against austerity measures within the EU, than the ‘home grown’ human rights instrument of the EU Charter of Fundamental Rights. Recent years have witnessed the resort to the European Social Charter as a response to the austerity measures, labour rights conditionality, and stabilisation mechanisms arising from the eurozone crisis.⁴⁶

38 Hazel Conley, ‘Using Equality to Challenge Austerity: New Actors, Old Problems’ (2012) *Work, Employment and Society*, 349–359, 354.

39 *Ibid.*, 357.

40 See Judy Fudge, ‘The New Discourse of Labor Rights: From Social to Fundamental Rights?’ (2007), *Comparative Labor Law and Policy Journal*, 29–66.

41 Simon Deakin, ‘Social Rights in a Globalized Economy’ in Philip Alston (ed) *Labour Rights as Human Rights* (OUP 2005) 51–52.

42 See n 40 above.

43 Tonia Novitz and Colin Fenwick, ‘The Application of Human Rights Discourse to Labour Relations: Translation of Theory into Practice’ in T Novitz and C Fenwick (eds) *Human Rights at Work: Perspectives on Law and Regulation* (Hart 2010).

44 T H Marshall, *Class, Citizenship And Social Development: Essays By T H Marshall* (Doubleday 1964).

45 See n 40 above, 30.

46 For example: Complaint No 66/2011 *General Federation of employees of the national electric power corporation (GENOP-DEI) / Confederation of Greek Civil Servants’ Trade Unions (ADEDY) v Greece*; Complaint No 65/2011 *General Federation of employees of the national electric power corporation (GENOP-DEI) / Confederation of Greek Civil Servants’ Trade Unions (ADEDY) v Greece*; Complaint No 76/2012 *Federation of employed pensioners of Greece v Greece*; No 77/2012 *Panhellenic Federation of Public Service Pensioners v Greece*; No 78/2012 *Pensioners’ Union of the Athens-Piraeus Electric Railways v Greece*. See Claire Kilpatrick, ‘Can Fundamental Rights Resocialize Europe?’ paper presented to the conference on ‘Resocializing Europe and the Mutualization of Risks to Workers’ 18–19 May 2012, University College London.

The European Committee of Social Rights (ECSR), the main supervisory body monitoring the implementation of the (revised) European Social Charter of the Council of Europe, has recently examined five complaints against Greece under the ESC's 'collective complaints procedure' concerning significant reductions in pension and employment rights imposed in both the private and public sector. The reforms, which in part allowed for the extension of a 'trial period' during which workers could be dismissed without notice to one year and the reduction of the basic salary for under 25-year-olds to two-thirds of the national minimum wage, were aimed at cutting costs for Greek employers affected by the GFC. The ECSR held, in October 2012, that the reforms contravened the European Social Charter and amounted to a violation of workers' rights, in particular, breaching Article 4 of the European Social Charter, which requires that workers be given 'reasonable' notice before termination of their employment.⁴⁷

Conclusion

The GFC has had a devastating impact on labour markets globally, and on livelihoods and incomes of ordinary working people. According to the ILO, there were an estimated 456 million workers around the world living below the US\$1.25 a day poverty line in 2011.⁴⁸ While working poverty has been on the decline (a reduction of 233 million since 2000 and of 38 million since 2007), there has been a marked slowdown in progress since 2008, with 50 million more working poor in 2011 than projected, based on pre-crisis trends.⁴⁹

The labour market institutions – employment protection laws and industrial relations systems, established welfare states in industrialised countries, or nascent systems of social assistance in developing countries – which might have served to protect workers from some of the harsher effects of the downturn, have struggled to meet the challenge and, in some instances, have been conspicuously targeted by austerity measures. Nevertheless, there remain significant voices – namely, the ILO, trade unions and workers' organisations, and those parts of the European Commission responsible for labour law and human rights – arguing for labour law and social rights as an essential element of economic and political governance, even more necessary during times of economic crisis.

47 The decision on the merits by the European Committee on Social Rights in the case *GENOP-DEI and ADEDY v Greece*, Complaint No 66/2011 was published on 19 October 2012. In this case registered on 21 February 2011, the complainant trade unions alleged that Greece was in breach of Articles 1 (right to work), 4 (right to a fair remuneration), 7 (the right of children and young persons to protection), 10 (right to vocational training) and 12 (right to social security) of the European Social Charter. In its decision on the merits, the Committee reached the following unanimous conclusions: no violation of Art 1 s1, Art 7 ss 2 and 9 of the 1961 Charter; but there were violations of Art 7 s7, Art 10 s 2, Art 12 s 3, Art 4 s 1 of the 1961 Charter in the light of the non-discrimination clause of the Preamble to the 1961 Charter.

48 ILO, *Key Indicators of the Labour Market (KILM)* 7th Edition, 14 October 2011: this biennial report covers 18 indicators on employment and decent work with the latest available data for more than 200 countries, areas or economies worldwide.

49 ILO, *Global Employment Trends 2012: Preventing a deeper jobs crisis*, Geneva 2012, at 42.