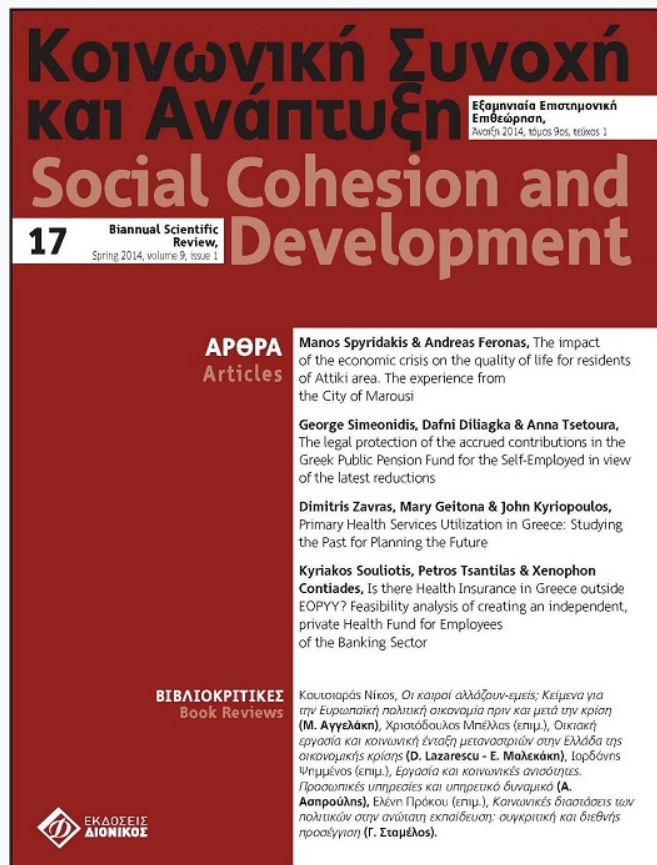


## Κοινωνική Συνοχή και Ανάπτυξη

Τόμ. 9, Αρ. 1 (2014)



Η νομική προστασία των συσσωρευμένων καταβολών στο Ελληνικό Δημόσιο Ασφαλιστικό Φορέα Ελευθέρων Επαγγελματιών υπό το πρίσμα των τελευταίων περικοπών

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doi: [10.12681/scad.8924](https://doi.org/10.12681/scad.8924)

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### Βιβλιογραφική αναφορά:

Simeonidis, G., Diliagka, D., & Tsetoura, A. (2016). Η νομική προστασία των συσσωρευμένων καταβολών στο Ελληνικό Δημόσιο Ασφαλιστικό Φορέα Ελευθέρων Επαγγελματιών υπό το πρίσμα των τελευταίων περικοπών. *Κοινωνική Συνοχή και Ανάπτυξη*, 9(1), 29–48. <https://doi.org/10.12681/scad.8924>

# The legal protection of the accrued contributions in the Greek Public Pension Fund for the Self-Employed in view of the latest reductions

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## Η νομική προστασία των συσσωρευμένων καταβολών στο Ελληνικό Δημόσιο Ασφαλιστικό Φορέα Ελευθέρων Επαγγελματιών υπό το πρίσμα των τελευταίων περικοπών

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### ABSTRACT

This paper focuses on the pensioners of the Greek public pension fund for the self-employed (OAEE) and is divided into two parts. The first part comprises calculations of pension reductions in certain cases for the self-employed. The analysis of the former illustrates the great difference in handling pensioners receiving low and high old-age pension benefits. The second part analyses the legal protection of the high-earnings pensioners precipitated by the Greek financial crisis. It is concluded that while there is no existing legal protection, there are some moral and legal arguments in support of their protection to ensure that their legal status is not undermined due to restricted financial resources.

**KEY WORDS:** pension system, Greek pension reform, pension reductions, principle of equivalence, principle of proportional equality

### ΠΕΡΙΛΗΨΗ

Το παρόν άρθρο αναφέρεται στους συνταξιούχους του ελληνικού δημόσιου ασφαλιστικού φορέα ελευθέρων επαγγελματιών (ΟΑΕΕ) και χωρίζεται σε δύο μέρη. Το πρώτο μέρος αναφέρεται σε υπολογισμούς σχετικούς με τις περικοπές των συντάξεων συγκεκριμένων ασφαλισμένων του ΟΑΕΕ. Η ανάλυση των προαναφερθέντων υπογραμμίζει τη διαφορά στο χειρισμό των συνταξιούχων που λαμβάνουν συντάξεις χαμηλές και υψηλές αντίστοιχα. Το δεύτερο κομμάτι ερευνά τη νομική προστασία των υψηλόμισθων συνταξιούχων υπό το πρίσμα της ελληνικής δημοσιονομικής κρίσης. Το άρθρο καταλήγει ότι ενώ δεν υπάρχει νομική προστασία υπό το παρόν νομικό πλαίσιο, υπάρχουν ηθικά και νομικά επιχειρήματα υπέρ της προστασίας των υψηλόμισθων συνταξιούχων, έτσι ώστε να μην υπονομευθεί το νομικό τους καθεστώς λόγω έλλειψης οικονομικών πόρων.

**ΛΕΞΕΙΣ-ΚΛΕΙΔΙΑ:** ασφαλιστικό σύστημα, μεταρρύθμιση ελληνικού συνταξιοδοτικού συστήματος, περικοπές συντάξεων, αρχή της ανταποδοτικότητας, αρχή της αναλογικής ισότητας

## 1. Introduction

**I**n May 2010, Greece, while trying to contain the lack of resilience in its economy and its banking system, signed financial assistance agreements with the Member States of the Euro-zone, the European Central Bank and the International Monetary Fund (hereinafter: the Troika). In order to meet the conditions of the agreements, Greece has had to adopt a series of austerity measures. The Greek Parliament adopted thus a series of reductions on the old-age pension benefits of the current pensioners. The national legislator reduced the old-age pension benefits on the basis of the amount of their last gross pension income.

This paper focuses on the reductions of the old-age pensions of the public pension fund for the self-employed (OAEE). OAEE was selected as subject of research, since the difference between contributions and benefits seems to become more evident in this fund. Aim of this paper is, firstly, to present in details the data, which reveal that the self-employed who voluntarily contributed the maximum available contributions throughout their entire working lives had their old-age pensions reduced from three to eight times more than the old-age pension benefits of those pensioners who paid the minimum legislated amount of contributions, in terms of gross income as opposed to the paid contributions; and secondly, to address the legal repercussions of this differentiation.

The paper is structured in two main parts. In the first part, a statistical-actuarial analysis of the reductions at issue is provided, making use of legislation and the selected pension amounts only. On this ground, a comparison is attempted between the two types of the insured based on their contributing patterns; the old-age pensioners who contributed the maximum and those who contributed the minimum constantly throughout their working lives. The comparison is made on the grounds of both the gross and net pension income. The second part consists of a legal approach as regards the reductions at issue taking into account the results presented in the first part. In particular, the paper addresses two legal claims that may be available to the current pensioners of OAEE: the principle of equivalence and the principle of proportional equality.

## 2. Part I

### *2.1 Introduction and Theoretical Background*

**O**AEE is the Greek Social Security Fund for the Self-Employed and is in reality a merger of three funds, the fund for the self-employed (TEBE), the one for professional drivers (TSA) and the one for shop owners (TAE). Since the fund started in 2007, in order to look into pensioners it is obligatory to go back and calculate the part of the pension according to the old legislation.

The calculations in this text have been made accordingly and refer to people who have contributed to only one fund, the one for the self-employed before the merger (TEBE) and the merged fund thereafter (OAEE). It is noted that TEBE accounts for almost 75% of OAEE currently, as regards new pensioners. Also, the whole working life of people retiring now is calculated on TEBE legislation for the people contributing in this scheme before 2007, while contributions were made according to OAEE classes. An insurance class actually defines to what extent a person contributes to a scheme. The categorization is made on the grounds of the monthly wages – as in the case of the Greek Private Employees Fund or on the grounds of the years of service, or a combination of the two. As regards TEBE, up until 1991 the insured would be classified based

on their annual income but since, all classes are theoretical. This means that the amounts of contributions are calculated on theoretical/presumptive earnings. Some of these are mandatory while others are optional. The same thing stands for contributions in all four funds (the merged and the three sub-funds). They are based on presumptive earnings, according to legislation.

The calculations in this text have all been made according to TEBE legislation, since this is where most inequalities are spotted. All pension amounts correspond to real pensioners currently receiving their pensions from OAEE. Sensitive data like Social Security numbers or Identification numbers have not been used but the amounts are all real. Further on, all pensioners are at least 60 years of age, thus the extra reductions of ar.44 par.11 L.3986/2011(a list of the laws of the reductions and their effect can be found in the appendix) do not apply. Also, being more than 60 years of age in 2012, the pensioners receive the 800 euro worth annual seasonal payments, where applicable ( refers to net income calculations).

Under TEBE there were ten insurance classes (A-J) and, subsequently, fourteen categories in OAEE. The insured would enter the system (TEBE) and contribute for a few years in the first compulsory class (5<sup>th</sup> class based on the last legislation), then move accordingly, until they reach the maximum compulsory class which, under TEBE, was the 8<sup>th</sup> (H), leaving the 9<sup>th</sup> and 10<sup>th</sup> (I,J) as the optional. As far as the optional classes are concerned, only people who decided to do so could contribute a maximum amount per month hence building towards an increased amount of pension. These contributors had to apply for their inclusion in the optional classes. This means that people with a strong feeling of saving for their third age decided to voluntarily contribute more in order to enjoy a better level of living after retirement.

The evolution of the insurance classes was affected by legislation which had been applied through the years. The broad context though, is the one mentioned above and details on legislation are not mentioned since they do not fit the scope of this paper, where real examples incorporating these changes have been used.

In the appendix, one can see the table with the presumptive insurance classes for 2009 through 2012, as they were kept stable for four years. As mentioned before, they are based on presumptive earnings. The connection between the class and the respective amount of income is the following: The amount of contribution is 20% the amount of the respective income. These classes are used to calculate the amount of pension for each year and month in each class the person has contributed. The basic pension amount, a flat rate bonus amount (ar.9 MD 116/1988), is added to the sum calculated from the years and months of service. Any pension calculated to be below the minimum automatically becomes the minimum.

The examples provided are based on 30, 35 and 40 years of service. The reasons as many years of service were chosen are the following:

To begin with, minimum pensions (usually with few years of contribution, just above 15) needed to be generally avoided as a strong impact of the *notion* of Social Security is included, as is expected. Then, since 35 years of service used to be the norm as well as the legislated threshold until 2009 for most Greek Public Pension Schemes, it is interesting to examine what happens both slightly over and under it.

Moreover, in order to clearly illustrate the point of the paper, the two extreme possible cases are dealt with: People contributing to the minimum possible insurance class, and those contributing to the maximum possible insurance class, all across their working lives. Having implemented all the possible legislation, as is reasonable since real examples are used, the transition was chosen with one main criterion. So that people who always followed the mandatory

path as opposed to those who always opted for the maximum available class are contrasted and the results are analyzed.

These completely opposite paradigms immediately outline the intense difference in pension reductions for the two kinds of pensioners with the different contributing patterns.

**Table 1. Results for gross income**

Years of service	Contributing pattern	Monthly pension amount before the reductions	Monthly pension amount after reductions
30	Min	1255	1181
	Max	2468	1752
35	Min	1492	1317
	Max	2847	1845
40	Min	1673	1425
	Max	3355	2058

To begin with, one can see six examples of pensioners whose working life is 30,35 and 40 years and for each respective amount of years of service one of the pensioners contributed at the minimum possible level, while the other at the maximum. The amounts of monthly pension for the years 2009 and 2012, hence before and after the reductions, can be seen in the two columns to the right in the table above. The calculation of the pension amounts before the reductions is a matter of routine when resorting to Table 2 in the appendix, while in the second case it becomes a lot more complex. For the second case, the ultimate goal is the calculation of the monthly pension amount for January 2013, as it will have been formed after all the reductions.

Since the basic amount which is added to the earnings related pension amount is in a form of a bonus and has been legislated on the grounds of Welfare, it is to be deducted from the pension amounts. In the first case, all 220 euros are deducted while in the second case the deduction follows the rules of the whole pension amount deduction, as is legislated. Hence, the table is now formed as:

**Table 2. Monthly pension amounts before and after the reductions without the basic pension amount**

Years of service	Contributing pattern	Monthly pension amount before the reductions excluding the basic pension amount	Monthly pension amount after reductions excluding the basic pension amount
30	Min	1035	1000
	Max	2248	1655
35	Min	1272	1195
	Max	2627	1800
40	Min	1453	1291
	Max	3135	1963

The great difference in reductions is already evident. However, the calculation of the replacement rates which follows below, gives more light to the above difference.

The replacement rate of any pension is given by the division of the first monthly pension amount of a pensioner to his last monthly wage as a contributor. It is one of the main drivers when looking into the reduction or not of the standard of living of a person after retirement. It is worth noting here that the people insured in OAEE are not one of the groups that are mainly affected by the reduction of their standard of living after retirement. Besides, this is not the central idea behind this text.

In this text, the working life-long average of contributions indexed by the fund has been used as the last monthly wage. There are two reasons for making this assumption, actuarial in nature. First, since all contributions are used to calculate the final pension amount of the insured in OAEE and not just the last 5 or 10 years as in other funds like the fund for the private employees in Greece until recently, using the whole career contributions average is also a good choice that follows the same notion. Then, since wages here are theoretical, a life-long average responds better to the calculations of the text and the idea behind them.

**Table 3. Calculation of replacement rates before and after the reductions, for pension amounts including or excluding the basic pension amount**

Years of service	Contributing pattern	Replacement Rate before reductions	Replacement Rate after reductions	Replacement Rate before reductions excluding the basic pension amount	Replacement Rate after reductions excluding the basic pension amount
30	Min	109%	103%	90%	87%
	Max	99%	70%	90%	66%
35	Min	138%	122%	118%	111%
	Max	126%	82%	116%	80%
40	Min	176%	150%	153%	136%
	Max	162%	99%	151%	95%

The replacement rates are a good way to put the message across coherently, as regards the differences in handling the two types of pensioners. An even more straightforward way to prove the abovementioned though, is the calculation of the reduction percentages of the replacement rates. These percentages provide a numerical explanation of the reduction of the standard of living of the two types of pensioners.

**Table 4. Reduction percentages of the replacement rates**

Years of service	Contributing pattern	Reduction percentage of the replacement rate	Reduction percentage of the replacement rates excluding the basic pension amount
30	Min	-6%	-3%
	Max	-29%	-26%
35	Min	-12%	-6%
	Max	-35%	-31%
40	Min	-15%	-11%
	Max	-39%	-37%

It becomes obvious that the insured who contributed the least possible amount throughout their working lives receive much fewer reductions than the people who contributed the maximum, up to almost eight times less reduction for 30 years of service.

Finally, it is worth looking at a comparative table for contributions and benefits for the two types of pensioners, in contrast to the reduction percentages of replacement rates.

**Table 5. Relative connection between contributions and benefits in contrast to the reduction percentages of the replacement rates excluding the basic pension amount**

Years of service	Contributing pattern	Accrued contributions	Contribution rate min/max	Connection between reduction rate of replacement rates
30	Min	82782		7,85
	Max	179760	217%	
35	Min	90530		5,22
	Max	189480	209%	
40	Min	91118		3,37
	Max	199200	219%	

The above table can be interpreted as follows:

For 30 years of service, the insured who paid the maximum contributions, has paid, based on the current values of the theoretical insurance classes, 217 percent more contributions and has received a 7,85 times greater reduction in his standard of living, excluding the basic pension amount.

Respectively, for 35 years of service, the insured who paid the maximum contributions, has paid, based on the current values of the theoretical insurance classes, 209 percent more contributions and has received 5,22 percent greater reduction in his standard of living, excluding the basic pension amount.

Finally, for 40 years of service, the insured who paid the maximum contributions, has paid, based on the current values of the theoretical insurance classes, 219 percent more contributions than the insured who paid the minimum, and has received 3,37 percent greater reduction in his standard of living, excluding the basic pension amount.

## 2.2 Results for net income

To illustrate the disparity in handling the two types of insured of the fund with these different contributing patterns, it is deemed necessary to look into the final, net income of pensioners after the reductions. In the Greek Pension System, it is not often that actuarial valuations provide net income. For example, when the Hellenic Republic provides actuarial valuations for the Directorate General for Economic and Financial Affairs (DG ECFIN), it always provides gross income. This is because of a lot of reasons, one of the most important being that the Greek tax system changes at least every few years in the last decade, and the policy makers most of the times provide the tax brackets for the current year when the first or even the second payment have already been made.

Constantly applying new taxes, either via deduction at source or when clearing, the policy makers do not help tax payers to organize properly, especially when some of these taxes are applied retroactively, as is the case for many of the reductions.

In this text, however, looking into the net income is more than necessary since it helps the main point of the text be proved beyond any doubt. Moreover, it helps move from a statistical analysis including an actuarial assumption to the study of net pension amounts thus anyone who had been sceptic about the assumption can now be driven to equivalent conclusion not including the latter. Also, people who are not familiar with the actuarial science can perceive the point in an easier way.

For the exact calculations, fourteen payments per year have been taken into consideration as the law instructed for 2009, for all OAE pensioners. In contrast, for 2012 the two seasonal payments have been replaced by three payments of 200,200 and 400 euros for Easter, annual leave and Christmas payments respectively. These amounts were given only to pensioners whose monthly pension amounts were below 2.500 euros gross, in 2012. Finally, the reductions of L.4093/2012 have not been taken into consideration as they would have to be matched with the 2013 tax scheme. The latter has not yet been announced as in the first days of 2013 thus confirming the comment above about people not being able to organize their financial matters due to the policy makers.

The tax schemes for the years 2009 and 2012 have been provided in the appendix to avoid confusion and unnecessary length of the main body of the paper.

Using the tables in the appendix one can come up with the net pension income below, provided no other tax-deductible disbursement has been used besides the 4% health coverage which is the same for all OAE pensioners and is applied on the monthly pension amounts, but not the seasonal ones. Besides, any other tax-deductible disbursement is not universal; hence it is beyond the notion of this text.

**Table 6. Net annual pension amounts for the year 2009**

<b>Annual Pension Amount 2009</b>	<b>Health Branch Contribution</b>	<b>Taxable income</b>	<b>2009 Tax</b>	<b>Final net income</b>
17.567	602	16.965	1.241	15.723
34.550	1.185	33.365	5.678	27.687
20.883	716	20.167	2.042	18.125
39.859	1.367	38.492	7.472	31.020
23.416	803	22.613	2.653	19.960
46.973	1.611	45.363	9.877	35.486

**Table 7. Net annual pension amounts for the year 2012**

Annual Pension Amount 2012	Health Branch Contribution	Taxable income	2012 Tax	Final net income
15.714	597	15.117	1.261	13.705
24.166	935	23.232	3.228	19.539
17.418	665	16.753	1.556	15.030
26.841	1.042	25.799	3.870	21.414
18.900	724	18.176	1.964	16.030
29.855	1.162	28.692	4.593	23.525

Comparing and contrasting the two tables above, one can make the comparing table below, which leaves – once again – no room for misunderstanding.

**Table 8. Results for net income**

Years of service	Contributing pattern	Income rate 2009/2012	Income rate of change	Connection between replacement rate reductions
<b>30</b>	Min	87%	-13%	2,29
	Max	71%	-29%	
<b>35</b>	Min	83%	-17%	1,81
	Max	69%	-31%	
<b>40</b>	Min	80%	-20%	1,71
	Max	66%	-34%	

The rate of change of net income of the insured that paid the maximum amount of contributions is reduced by approximately twice as much in all cases. This constitutes proof of the difference in the handling of the two types of pensioners. Having their net income reduced by about 30% in any case, people who were forethoughtful were deprived of one third of their net income in just four years. The ones that contributed to the minimum had their income reduced to only thirteen to twenty percent. These latter reductions were definitely not minor ones, but evidently much milder than the ones above.

## 2.3 Concluding Remarks

**T**he results provided above prove beyond the shadow of a doubt the disparity of handling between the insured in OAEΕ with the different contributing patterns, as analyzed above. It is also worth noting that the more a low-earner contributed, the greatest the reduction they received were when comparing to the person with the opposite pattern but the same years of service. The latter stand for both reductions in replacement rate as well as reductions in net income.

It should be noted here that this comparison is made among the insured within the fund and not generally. OAEE – with replacement rates as calculated in table 3 – ranging from 70 percent to more than 100 percent including the basic amount is a fund that sufficiently pays back the insured their contributions.

Based on this last conclusion, one can account for the great reduction in pensions in OAEE as a whole, but the difference in handling is still not justified.

What is happening in reality is that the policy-makers are penalizing the people with hindsight. Those who – instead of spending their money on plenty other needs – decided to save it in their social security scheme. And it goes without saying, that these people who contributed more were also the ones who supported the Greek Pay-As-You-Go (PAYG) system and sustained a steady level of cash-flow from the insured to the pensioners. One could say that in the widespread ancient Aesop fable, the Cicada and the Ant, the Cicada has finally found its vindication.

## 3. Part II

### 3.1 Introduction

Several social security systems from their very beginning were structured on the combination of two basic mechanisms, the solidarity agreements and an “insurance relation” implying the payment of contributions by the employed and the employers. This Bismarckian type of social insurance in particular is based on the principle of equivalence, albeit it also comprises elements of solidarity (Clasen and Oorschot, 2002: 98). In this respect, social security represents a broader social aim (solidarity in a society) trying to assure the funding of the system through a structure of correspondence between contributions and benefits (social insurance). The social security systems in this form have already been known as functioning under the social solidarity and the equivalence principle. For the purposes of this research, solidarity is defined as the redistribution from good to bad risks and from richer to poorer contributors or non-contributors (Clasen and Oorschot, 2002: 98), while equivalence is conceived as the principle indicating that the social benefits should be provided in proportionality with the paid contributions (Stergiou, 2012: 323). Both of these terms have been analyzed by the jurisprudence and utilized by the relative courts when assessing social security rights. It has to be noted that the in-built tension between the principle of solidarity and need is likely to become more precarious when the latter elements expand, potentially undermining the schemes’ legitimacy in the eye of those who financially contribute most; however, these potential pressures on social insurance do not necessarily imply the importance of the solidarity principle is bound to decline (Erskine and Clasen, 1997).

Generally, it is observed that the equivalence principle seems to fall back more and more mainly by reasons related to the endangered social capital when fiscal aims are in the spotlight. This is the case at present taking into account the national public deficit and the measures the Greek state is obliged to apply in order to deal with its debt and its creditors. Principally, the national legislator has the discretionary power to introduce the necessary legal acts in order to respond to the emerging socio-economic needs. However, the legal doctrine and the relative case-law have developed certain rules and principles according to which the legislator’s interference with pension rights is to take place, namely the protection of the equivalence principle (II) as well as the protection of proportional equality (III).

## 3.2 The Principle of Equivalence

The social insurance system in Greece operates under public law and is enshrined within Article 22 paragraph 5 of the Greek Constitution, according to which "*The State shall care for the social insurance of the working people, as specified by law*". The Greek jurisprudence<sup>1</sup> as well as a large part of the Greek literature (Kremalis, 1998: 442; Kontiadis, 2004: 380) interpreting the Article 22 par 5 acknowledged the constitutional guarantee of social insurance as an institution, whose core elements may not be affected. The Greek jurisprudence has not yet specified the core elements of the social insurance institution. The Greek literature has supported that two of the main substances of the social insurance system are: the principle of social solidarity and the principle of equivalence (Angelopoulou, 2009: 157). Taking into account, thus, the main substances of the social insurance system, we could advocate that the legislator is expected to protect the social insurance institution and the overall system by giving these substances in practice the constitutional value with which the Greek Constitution has enclosed them.

The principle of solidarity and the principle of equivalence seem to lie uneasily with each other. On the one hand, the principle of solidarity aims to decline the gap among the beneficiaries of the old-age pension benefits' level in view of repairing the social inequalities and upgrading somehow the less-advantaged of the society.<sup>2</sup> On the other hand, the principle of equivalence aims to assure a proportional relationship between the paid contributions and the provided benefits securing to the beneficiary the same living standards before and after retirement (Stergiou, 2013: 23).

The Greek Constitution does not explicitly provide which of these two principles has priority in Greek social security law. The latter is dependent on the social policy decided by the successive Greek governments. The Greek public pension system is financed on a pay-as-you-go basis: the money earned by the employed generation is paid to current pensioners (Ministry of Employment and Social Protection, 2005: 5) following the Bismarck approach (Korda, 2013: 149).<sup>3</sup> Its function was enacted in the 1950's to cover the risk of ageing through cash benefits and services (Ministry of Labour and Social Security, 2002: 5). However, it also foresees elements of solidarity. After the Second World War, key contributor to the Greek pension system became the principle of social solidarity, which can be witnessed through the social security bills No. 1846/1951 and No. 2698/1953 concerning the establishment of minimum pension income and No. 4169/1961, according to which farmers were covered through a compulsory scheme funded only through general taxation and not through contributions (Katrougalos, 2009: 232). After the restoration of democracy in 1975 till today, the principle of solidarity elements commanded further an important position in the Greek public pension system providing generous funding process and universal coverage. The State guarantees a fixed amount, not equivalent to contributions paid and the pension levels are not dependent on the range of insured persons or on the amount of contributions (Börsch-Supan/Tinios, 2002: 398). The principle of equivalence became thus secondary.

The Greek jurisprudence has often resorted to the principle of social solidarity *a contrario* to the principle of equivalence, in order to justify the non-equivalence between the high level of contributions with the lower amount of the old-age pension benefits (Stergiou, 2005: 171). More particular, according to the Council of State, the legislation foreseeing that there should be a limit on the amount of the old-age pension benefits is constitutional, since the principle of equivalence does not enjoy constitutional consolidation and for the protection of the principle

of social solidarity.<sup>4</sup> Similarly, the Council of State has adjudicated that “the legislator is allowed, in virtue of the social solidarity principle, to enact more favorable treatment for the economically weak of the social insured”,<sup>5</sup> while the Court of Justice of the European Union which has stated that “social security systems are directed towards a social goal and shall also comply with the principle of solidarity”<sup>6</sup> Exceptionally, a precedent in favour of the high-earnings beneficiaries was created by the judgment of the Supreme Administrative Court No. 4837/1997.<sup>6</sup> In this case, the Court examined the granting of hospital and medical expenses to the commercial naval officers; the social insurance fund of the navy covered the 80% of the hospital and medical expenses of all the high-earnings beneficiaries. This percentage is lower compared to the cover of the hospital and medical expenses of the lower classes of naval crew that had proportionally contributed less. The Court declared that it constitutes an infringement of the constitutional principle of equivalence the fact that higher amount of social benefits for the same social risk is granted to the beneficiaries that have paid less contributions to the fund in comparison to those beneficiaries of the same fund that have paid higher contributions.

Therefore, taking into consideration the above, on the one hand, to a certain extent, a differentiation leading to a greater burden on the shoulders of the insured that paid higher contributions to the pension system is in compliance with the duty of social solidarity, deriving from Art. 25 par. 5 of the Greek Constitution considering also the general interest of the social aims’ materialization and the fact that the national fiscal balances is under threat.<sup>7</sup> On the other hand, however, the principle of equivalence should not be refuted at all under a defective conveyance of the solidarity principle in practice, since both constitute main cores of the social insurance as an institution (Stergiou, 2008: 844). A fair balance should be guaranteed between the two principles. This fair balance should be established through limits. These limits are to be set through the principle of proportional equality (Stergiou 2013: 31).

### ***3.3 The Principle of (Proportional) Equality***

**I**t is not always the case that the principle of social solidarity is lawfully implemented when pushing aside other constitutional principles and rights which enjoy equivalent legal value. Most importantly, the principle of equality is of primary importance in the field of shaping social security rights. Both the legislative and the administrative power are to introduce measures that will not infringe the principle at issue, as the latter is intrinsically connected with social insurance and its social goals. Some measures in favor of the less-advantaged (low-earnings pensioners) may be allowed for the fulfillment of the social goals of the social insurance institution combined with the application of the social solidarity principle (Stergiou, 2012). There have been established though certain criteria according to which the possible measures of favorable treatment will be decided. As it has been advocated, the measures have to be objective and justified, while the law-maker is not allowed to proceed arbitrarily to obviously unequal treatment.<sup>8</sup>

The principle of equality under Article 4 par. 1 Gr. Const. is conceived in the field of social insurance as the concept of the proportional equality (typical or legal analogy): every measure which leads to an equation of unlike categories or conditions contravenes the principle of the proportional equality (Stergiou, 2012: 322). As to the social insurance, the principle at issue imposes the participation of all the insured in the system of contributions and benefits under equal terms (Stergiou 2012: 322). In parallel, the same principle implies a contrario that a non-

equal treatment of the insured is to be applied at the level of benefits on the basis of a different degree of participation (through contributions) in the social insurance system; namely, equality entails the acceptance of differentiation by categorizing the insured according to objective and justified criteria which are seen as limits on arbitrary legislature (Stergiou, 2012).

### ***3.4 Reduction of the “High” Old-Age Pension Benefits after the Greek Crisis***

**A**fter the crisis since today, the old-age pension benefits of the self-employed that contributed the maximum possible amount throughout their working lives have been reduced almost three to eight times more in relation to those who contributed the least possible amount. It has to be noted though that the crisis is not only about economy, but it is also about the social changes and differentiation and the insurance technique in particular (Sakellaropoulos 2010: 381). Financial consolidation cannot be materialised exclusively through changes of the internal parameters of social insurance such as the increase of the retirement age or the contributions and the reduction of benefits (Sakellaropoulos, 2010: 385). As was proved in the first part of the present paper, The old-age pension benefits of the pensioners that contributed the maximum possible amount through their working lives (first group) were reduced from 26 per cent to 37 per cent, while the old-age pension benefits of the pensioners that contributed the least possible (second group) was reduced 3 per cent to 11 per cent. An additional consideration should be given to the continuous reductions of the first group taking into account that they paid about 200% more contribution to the fund in comparison to the second group. This disregards the principle of equivalence enshrined within the Article 22 par. 5 of the Gr. Const. Aim of these reductions was to meet the new economic challenges, namely the high fiscal public debt, as well as to protect the “low-earnings” pensioners. A question, which is ripe for consideration, is, however, whether the principle of equivalence and of the proportional equality should be refuted at all in the name of the social solidarity as a plea.

The initial function of the old-age pension benefits should be to keep the similar standards of living before and after retirement (Stergiou 2010: 86; Stergiou 2012: 338; Stergiou 2013: 29). Shall the legislator neglect the fact that a segment of the self-employed paid voluntarily higher contributions to their public pension fund than other self-employed who paid the minimum compulsory contribution, this means that the old-age pension benefits acquires the character of social assistance, in which prior contributions are not playing a role as far as the level of the social benefits are concerned. This, however, removes the character of social insurance that is explicitly guaranteed in Article 22 par. 5 of the Gr. Const.

Moreover, except for completely annulling the equivalence principle in this way, the legal acts at issue contravene the principle of proportional equality, while introducing an erroneously conceived solidarity. The Greek public pension system is not purely based on solidarity elements but it is also based on obligatory contributions and this creates a right to old-age pension benefits corresponding proportionally to the amount of the contributions made to the pension fund of the self-employed as well as to the period of time during which the contributions were made. As it has been adjudicated, though, by the European Court of Human Rights in a relevant case<sup>12</sup>, the imposed by the public interest measures to deal with the social security's fund's financial

problems cannot burden only a certain number of pensioners who had to bear the most intensive measure of all, whereas the vast majority of the other pensioners continued to receive benefits at the same level as before the legislation came into force (Kapuy, 2007: 229; Heredero, 2007: 30). It is not about social solidarity and repairing social inequalities when measures as the current ones introduce obviously unfavorable reductions imposing excessive burdens only to a certain category of population. Specifically, the pensioners are not classified by criteria suitable for the application of reductions such as the duration of insurance or the height of the contributions (equivalence), but they are treated in a unified way without the necessary differentiation (Stergiou 2013: 26).

Last but not least, introducing reductions in a progressive scale at the expense of those that contributed the maximum available amount of contributions cannot be used at the expense of the principles of equivalence and proportional equality, when the measures are lacking of proper actuarial studies to prove that are appropriate for the aims they are supposed to fulfill, the resolution of the social insurance system's financial needs at a macroeconomic level (Temming-Davilla, 2011: 414). Namely, there was not an elaborate research in order to stimulate accurately the way in which the concrete reductions under discussion would serve the limitation of expenditures and the guaranteeing of the system's financial sustainability being considered as State's obligations. In fact, the obligation for previously conducted actuarial studies is imposed by the article 22, par. 5 Greek Const., as well as by the article 70, par. 3 of the European Code of Social Security and article 71, par. 3 of ILO Convention 102/1952 (Stergiou 2010: 89). Undoubtedly, reductive measures of that intense can be regarded as resulting in the infringement of the pensions' equivalence constituting at the same time a breach of the equality principle as far as the participation in the public burdens is concerned (Stergiou 2013: 34).

## 4. Conclusion - Remarks

**T**his paper has addressed the very topical question of the high reductions of the self-employed of the OAEF in accordance to the paid amount of contributions. In the first session of the paper, we found that the people who were willing to set aside more funds for their third age have come into a far greater reduction in both their gross and net incomes than the ones who chose to save only the mandatory amounts. These results have had a significant impact on the constitutional rights of the current pensioners. In the second session, the paper highlights two potential constitutional principles, which may be available to the current pensioners: the principle of equivalence and the principle of the proportional equality. It analyses the interpretation of both principles in the Greek jurisdiction in reference to the principle of social solidarity. It concludes that while pension reductions are not *per se* prohibited by law, new circumstances call for new thoughts and so a re-evaluation of the content under the proportional relationship of the institution should make its appearance in Court and legal theory. Certain concessions, as outlined in the paper, have to be made to protect the rights of the pensioners directly affected by law.

Namely, while the principle of social solidarity is accepted as justifying the large differentiation between the reductions adopted on the pensioners that contributed the minimum and the maximum amount to the self-employed fund, the national legislator should take into consideration the principle of equivalence and proportional equality alongside with the principle of social solidarity under certain conditions. Firstly, the principle of equality comes to set the

conditions on the legislator's options; and secondly, a fair balance should be kept between the principles of equivalence and social solidarity, on the basis of which the social security system's function has been structured, in the way that the burden of the problem is distributed. One issue that is unresolved, however, is the imposition of actuarial studies. In the case under research, a certain category of old-age pension benefits was reduced to a greater extent than the other category under comparison.

The legislature is to ensure the protection of the equivalence and solidarity principles-core elements of the social insurance by assuring their application correspondingly. Notwithstanding the case-law has not recognized a direct application of the equivalence principle, it cannot be disregarded that especially in relation to social insurance funds mainly based on contributions there has been a connection with a sufficient element of equivalence. We could claim that the reluctance till now from the competent Courts' adjudications to utilize the existence of the equivalence principle should be seen with more skepticism under the current socio-economic context.

## Appendix

**Table 1. Laws including reductions applicable on OAEE pensioners and their effect**

L. 3845/2010 ar.3 par.10,14 as modified with L.4038/2012 ar.24 as modified with L.4093/2012 ar.1 subpar. IA6/3 as modified with Legislative Resolution Gazette 229/19-11-12 ar.10 par.3	Pensioners above <b>60</b> years of age with an income of monthly pensions below <b>2.500</b> euros gross, receive <b>seasonal payments</b> of total worth:	Effective 2010: 800 euros	Effective 2013: 0 euros
L. 3863/2010, ar. 38 effective <b><u>1/08/2010</u></b> , as modified with L. 3986/2011, ar. 44 par. 10 effective <b><u>1/08/2011</u></b>	<b>Monthly Solidarity Contribution for Pensioners</b> (Gross pension amounts)	Effective 1/08/2010	Effective 1/08/2011
	1.400,01 to 1.700, 00	3%	3%
	1.700,01 to 2.000,00	4%	6%
	2.000, 01 to 2.300,00	5%	7%
	2.300,01 to 2.600,00	6%	9%
	2.600,01 to 2.900,00	7%	10%
	2.900,01 to 3.200,00	8%	12%
	3.200,01 to 3.500,00	9%	13%
L. 3986/2011, ar. 44 par.11 Effective <b><u>1/08/2011</u></b>	<b>Additional Contribution on gross pensions for pensioners below 60 years of age:</b>		
	1.700,01 to 2.300,00 - 6%		
	2.300,01 to 2.900,00 - 8%		
	More than 2.900,01 - 10%		
L. 3863/2010, ar. 69 Effective <b><u>1/08/2010</u></b>	Additional Contribution of 1 euro per month for all pensioners		
L. 4024/2011, ar. 2 Effective <b><u>1/11/2011</u></b>	<b>Reduction of 20%</b> on the part of the pension that exceeds <b>1.200 euro gross</b> , as has been formed after the implementation of the abovementioned laws.		
L. 4051/2012, ar. 6 Effective <b><u>1/01/2012</u></b>	<b>Reduction of 12%</b> on the part of the pension that exceeds <b>1.300 euro gross</b> , as has been formed after the implementation of the abovementioned laws.		
L.4093/2012, subpar. .IA5. Effective <b><u>1/01/2013</u></b> .	<b>A further reduction</b> on pensions as have been formed after the implementation of the abovementioned laws.		
	1.000,01 to 1.500,00	5% (but not less than 1.000,01 )	
	1.500,01 to 2.000,00	10% (but not less than 1.425,01)	
	2.000,01 to 3.000,00	15% (but not less than 1.800,01)	
	3.000,01 or more	20% (but not less than 2.550,01)	

**Table 2. TEBE Insurance Classes Contributions and Pension Calculation for the years 2009 through 2012 based on Presumptive Earnings**

	Insurance Class		Monthly presumptive insurance class contribution	Year ( X% of the class amount)	Month ( X% of the class amount divided by 12)
0-30 Years 15%	A	1	55	8,25	0,69
	B	2	77	11,55	0,96
	C	3	100	15,00	1,25
	D	4	123	18,45	1,54
	E	5	162	24,30	2,03
	F	6	186	27,90	2,33
	G	7	228	34,20	2,85
	H	8	280	42,00	3,50
	I	9	423	63,45	5,29
	J	10	515	77,25	6,44
31-35 Years 25%	A	1	55	13,75	1,15
	B	2	77	19,25	1,60
	C	3	100	25,00	2,08
	D	4	123	30,75	2,56
	E	5	162	40,50	3,38
	F	6	186	46,50	3,88
	G	7	228	57,00	4,75
	H	8	280	70,00	5,83
	I	9	423	105,75	8,81
	J	10	515	128,75	10,73
36 Years and over 30%	A	1	55	16,50	1,38
	B	2	77	23,10	1,93
	C	3	100	30,00	2,50
	D	4	123	36,90	3,08
	E	5	162	48,60	4,05
	F	6	186	55,80	4,65
	G	7	228	68,40	5,70
	H	8	280	84,00	7,00
	I	9	423	126,90	10,58
	J	10	515	154,50	12,88

In 2009, before the pension reductions, the tax brackets used to be:

**Table 3. Tax Brackets for Pensioners for the Year 2009 / Fiscal Year 2010**

Tax Brackets for Pensioners for the Year 2009 / Fiscal Year 2010				
Tax Bracket	Tax rate	Bracket tax	Sum	
			Income	Tax
12.000	0%	0	12.000	0
18.000	25%	4.500	30.000	4.500
45.000	35%	15.750	75.000	20.250
Surtax	40%			

Since then, the tax brackets have changed and the ones for the year 2012 are shown in the table below:

**Table 4. Tax Brackets for Pensioners for the Year 2012 / Fiscal Year 2013**

Tax Brackets for Pensioners for the Year 2012 / Fiscal Year 2013				
Tax Bracket	Tax rate	Bracket tax	Sum	
			Income	Tax
5.000	0%	0	5.000	0
7.000	10%	700	12.000	700
4.000	18%	720	16.000	1.420
10.000	25%	2.500	26.000	3.920
14.000	35%	4900	40.000	8820
20.000	38%	7.600	60.000	16.420
40.000	40%	16.000	100.000	32.420
Surtax	45%			

Besides the above tax calculation table, another kind of tax applicable to pensioners for the year 2012 is shown below:

**Table 4. Tax brackets for the special contribution for pensioners for year 2012 / Fiscal Year 2013 (L.3986/2011 ,ar.29)**

Special contribution for Pensioners Brackets for the year 2012 / Fiscal Year 2013	
0-12.000	0%
12.001-20.000	1%
20.001-50.000	2%
50.001-100.000	3%
Surtax	4%

### *Sources for Part I*

OAEF pensioners files for the years 2008-2012

Hellenic Ministry of Labor and Social Security

Hellenic Ministry of Finance

Hellenic Statistical Authority

Labor Legislation Bulletin

### **Notes**

1. Council of State, No. 2253/1976; Areios Pagos, No. 52/1982.
2. Council of State No.4837/2007.
3. The PAYG system establishes a bilateral relationship between the currently employed and the pensioners to whom the earmarked revenues are redistributed as cash benefits. See more *Hinrichs*, in: *Petersen/Petersen* (eds.), *The politics of age*, p. 119.
4. Council of State No.707/2006; No. 527/2009.
5. Council of State No.4837/2007.
6. StE 4837/1997, Databank Nomos.
7. Council of State No. 4078/96.
8. El. Syn. 1743/91; Dioik. Prot. Ath. 33307; THPDD 7/2008.

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