

# THE LEGALITY OF THE TROIKA AND ITS CRISIS POLICIES

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# Structure



- 1. Legal Basis of the Troika**
- 2. Fundamental and Human Rights  
Limits of COM and ECB**
- 3. Possible Litigation Strategies**

# Legal Basis

- **Legal Framework:**
  - Greece (March 2010), Art. 122 II TFEU
  - Since September 2012: European Stability Mechanism (ESM)
  
- **Structure of Decision Making**
  - No Participation of the European Parliament
  - Conditionalisation of Credits
  - Involvement of Troika



„Troika“

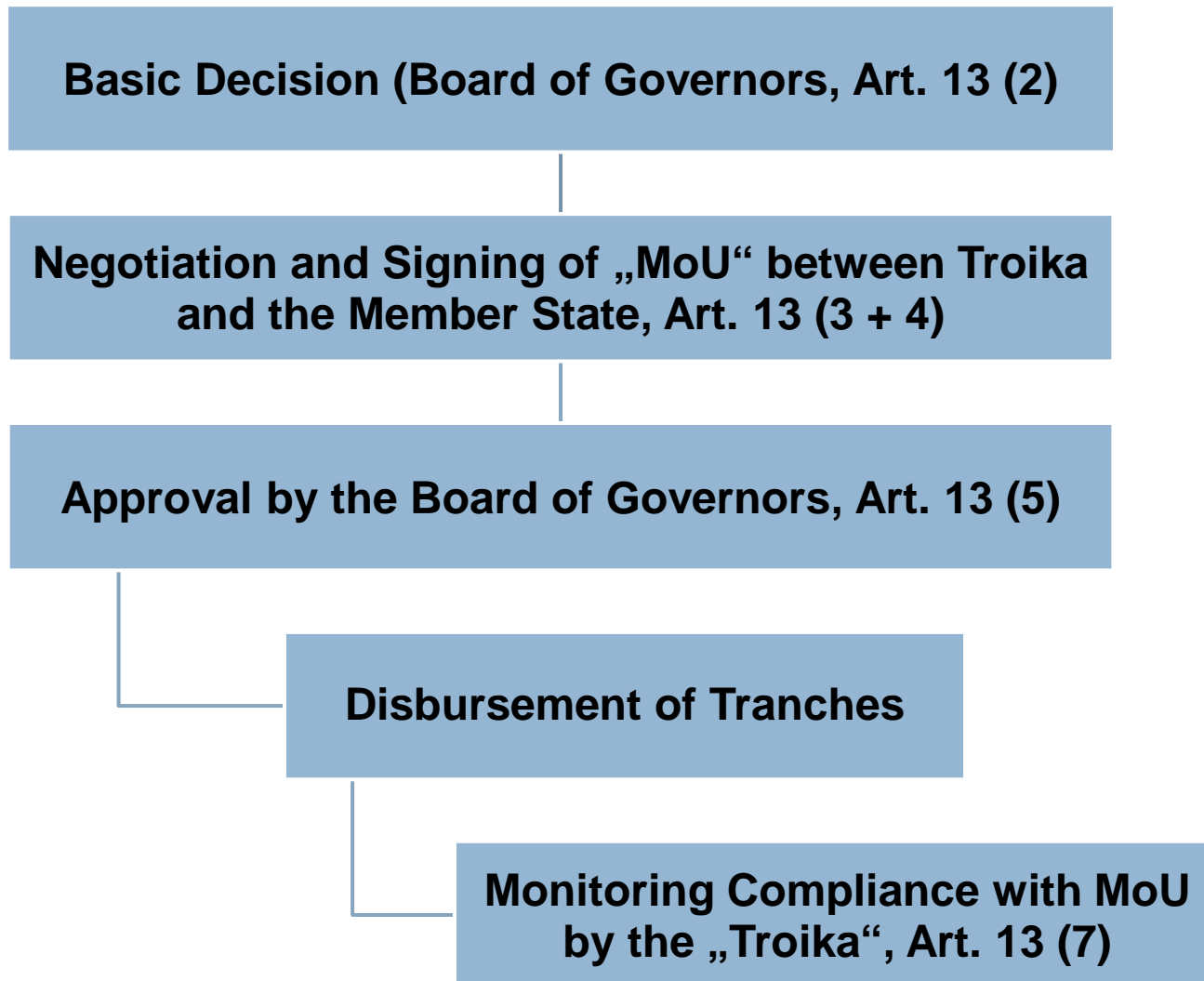
A diagram showing the 'Troika' structure. At the top is a blue box labeled '„Troika“'. A horizontal line below it connects to three vertical lines, each leading to a box below: 'European Commission' on the left, 'European Central Bank' in the middle, and 'International Monetary Fund' on the right. A decorative bar at the top left consists of a blue segment followed by an orange segment.

**European  
Commission**

**European  
Central Bank**

**International  
Monetary  
Fund**

# Procedure, Art. 13 ESM-Treaty



# Legal Problems

## Institutional:

- No Competences at EU-level
- No participation of EP
- Participation of European Central Bank

## Substantial:

- Human Rights Obligations of EU
- Violation of Human Rights

# Institutional Competence



**ECJ, C-370/12, Judgment 27/11/2012, „Pringle“, 161:**

“... the tasks conferred on the Commission and the ECB do not alter the essential character of the powers conferred on those institutions by the EU and FEU Treaties.”

# Three Dimensions

- **No Competences at EU-Level**
  - Art. 153 para. 5 TFEU (right of association, the right to strike or the right to impose lock-outs etc.)
  - Restricted competences concerning health, education etc.
- **Alteration of Competences**
  - Committee on Economic and Monetary Affairs (25/2/2014):  
“Notes that because of the evolving nature of the EU response to the crisis, the unclear role of the ECB in the Troika and the nature of the Troika decision making process, the Troika’s mandate has been perceived as being unclear, lacking transparency and democratic oversight” (48)
- **Denial of the Competences of EP (Art. 10 TEU)**
  - Committee on Economic and Monetary Affairs (11/2/2014):  
“Regrets that the system of financial assistance has not yet been brought under proper parliamentary scrutiny and accountability in the framework of the EU Treaties”



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# Art. 6 TUE

1. The Union recognises the rights, freedoms and principles set out in the **Charter of Fundamental Rights of the European Union of 7 December 2000**, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties. (...)
2. The Union shall **accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms.** (...)
3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and **as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.**

# International Treaties

## 1. International Level

1. ILO Conventions
2. UN Covenant on Liberal and Political Rights
3. UN Covenant on Social, Economic and Cultural Rights
4. UN Disability Convention

## 2. European Level

1. European Convention on Human Rights
2. European Social Charter (1961)
3. Revised European Social Charter (1996)

# Customary International Law

- **International Bill of Rights:**
  - ▣ UN Covenant on Civil and Political Rights
  - ▣ UN Covenant on Social, Economic & Cultural Rights
- **ILO – Core Labour Standards:**
  - ▣ Freedom of association and the effective recognition of the right to collective bargaining
  - ▣ Elimination of all forms of forced or compulsory labour
  - ▣ Effective abolition of child labour
  - ▣ Elimination of discrimination in respect of employment and occupation

# Professional Freedom, Right of Collective Bargaining, Fair and Just Working Conditions

- **Protected in:** Art. 27 to 32 CFREU, Art. 1 to 6, 24 RESC, Art. 6 to 8 UN Social Covenant, Art. 11 ECHR and ILO Core Labour Standards
- **Affected through:**
  - lowering the level of minimum wages
  - lowering of pensions, reduction of vacations
  - sanctioning of job seekers
  - lowering of unemployment compensation
  - restrictions on bargaining systems

## ILO, Report on the High Level Mission to Greece, Athens (19.-23.09.2011), para. 304 et seq.

“The High Level Mission is deeply concerned that the conclusion of “collective agreements” in such conditions would have a detrimental impact on collective bargaining and the capacity of the trade union movement to respond to the concerns of its members at all levels, on existing employers’ organizations, and for that matter on any firm basis on which social dialogue may take place in the country in the future.”

# Affected Human Rights

- **Social Security and Social Assistance:** Art. 34 CFREU, Art. 12 and 13 RESC, Art. 9 and 11 UN Social Covenant and Art. 2, 3, 8, 14 ECHR
- **Health Care:** Art. 35 CFREU, Art. 11 RESC, Art. 12 UN Social Covenant, Art. 2, 3, 8 ECHR
- **Education:** Art. 14 CFREU, Art. 9, 10 RESC, Art. 2 AP I ECHR, Art. 13 UN Social Covenant
- **Property:** Art. 17 CFREU, Art. 1 AP I ECHR
- **Good Governance:** Art. 41 CFREU, Art. 6 ECHR

# Proportional Encroachments?

- ▣ **Unproportionality**
  - Prohibition of Regression
  - Unproportionality of Deficit Limits
  - No Protection of Ressources
  - No Evaluation of Alternative Cuts
  - No Fair Balancing
- ▣ **Violation of Core Obligations**
- ▣ **Discriminating Effect**
- ▣ **Violation of Core Procedural Rules**



# Non Discrimination

CESCR, Concluding Comments, fifth periodic report of Spain (18.05.2012), E/C.12/ESP/C0/5, Ziff. 8

“the enjoyment of their rights by disadvantaged and marginalized individuals and **groups, especially the poor, women, children, persons with disabilities, unemployed adults and young persons, older persons, gypsies, migrants and asylum seekers**”

# European Committee of Social Rights, Complaint No. 76/2012, Federation of employed pensioners of Greece (IKA-ETAM) v. Greece, 07/12/.2012

„...the Government has **not conducted the minimum level of research and analysis into the effects.** (...) Neither has it discussed the available studies with the organisations concerned, despite the fact that they represent the interests of many of the groups most affected by the measures at issue. (...) The Government has not established, as is required by Article 12 §3, that efforts have been made to maintain a **sufficient level of protection for the benefit of the most vulnerable members of society,** even though the effects of the adopted measures risk bringing about a **large scale pauperisation of a significant segment of the population, as has been observed by various international organisations.**”

# ILO, Report on the High Level Mission to Greece, Athen (19.-23.10.2011), Ziff. 88

“In response to a question from the High Level Mission, the Government indicated that data from ELSTAT showed that approximately 20 per cent of the population was facing the risk of poverty **but that it did not have an opportunity, in meetings with the Troika, to discuss the impact of the social security reforms on the spread of poverty, particularly for persons of small means, and the social security benefits to withstand any such trend. It also did not have the opportunity to discuss the impact that policies in the areas of taxation, wages and employment would have on the sustainability of the social security system.**”

# Litigation Strategies

- **EU Procedures**
  - COM
  - Ombudsman, Art. 228 TFEU
  - ECJ
    - **Action for Annulment, Art. 263 TFEU**
    - Preliminary Procedure, Art. 268 TFEU
    - Compensation, Art. 268 TFEU
    - Art. 27 ESM
- **European Council Procedures (ECHR, Social Committee)**
- **Global Institutions (ILO, IMF, UN-Committees, ICJ)**

# Links zur Studie und weiterführende Literatur

- Die Studie in deutscher und englischer Sprache sowie weiterführende Literatur sind auf der Website der AK abrufbar:  
**<http://bit.ly/1dydnf6>**



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