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**STATE INTERVENTION IN THE EDUCATIONAL PROCESSES OF  
PRIVATE SCHOOLS IN GREECE: THE IDIOMATIC EMPLOYMENT  
STATUS OF TEACHERS**

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**ABSTRACT:** *This study is an inquiry into the state intervention in the educational processes of the private schools in Greece with an emphasis on the employment status of teachers. First, it examines the constitutional and legislative framework of private education and state surveillance. Then, it investigates the employment status of teachers in private schools and the state involvement in the hiring procedure, the conclusion of the labor contract, and the termination procedure. The study ends with concerns about the constitutionality of state intervention in the above procedures and suggests improvements for a just and compatible legal framework.*

**KEYWORDS:** private schools, state intervention, teachers' recruitment, teachers' dismissal, the principle of proportionality

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## **INTRODUCTION**

Greek state, like all modern democratic states, has a fundamental and legitimate interest in ensuring that all children receive an adequate education, whether in a state or non-government institution. In this sense, the state intervention in the educational processes of the public and private schools seems to be a self-evident obligation in the context of the welfare state. An important issue to address, however, is the extent of that public interest and the best way to secure it in a free educational system<sup>2</sup>. In Greece, a large part of the state intervention – and the most controversial – concerns the regulation about the employment status of private school teachers, which combines rules of private law with rules of public law. This combination as a principle is timeless in all legislative initiatives and what differs actually from time to time is the percentage of private law or public law in the legislation, which depends on the political characteristics of each government, either leaning towards private law with less state involvement or towards public law with more state involvement. Regardless of the degree of this percentage, the coexistence of private and public law at the same time in the employment relationship of teachers in a private school often raises difficult questions of interpretation requiring the resolution of contradictions and conflicts. This article presents the regulation concerning teachers' employment relationships in private schools in Greece and suggests improvements for a just and compatible legal status.

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<sup>2</sup> See Randal, V. E. (1992). Private School and State Regulation. The Urban Lawyer. Vol. 24. No.2, pp. 341-378.

### **The Constitutional Framework of Private Education**

Private education has a timeless and historical development from the very first steps of the establishment of the Greek State.<sup>3</sup> The establishment and operation of private schools are first recognized in the Political Constitution of 1827 (Article 20), which established the freedom of private education in the non-independent and still rebelling Greek State. Specifically, it is stated that Greeks have the right to establish schools and select teachers for their education (Article 20) and that Parliament ensures the provision of free compulsory education at the lowest level. A similar provision was set in the Hegemonic Constitution of 1832 (Article 28).<sup>4</sup>

In the following years, the efforts to design an educational policy were intensified, especially during the period from 1832 to 1840, and developed according to the Bavarian organization standards. Several decrees regulated matters of public and private education.<sup>5</sup> Officially, private education in Greece was first enshrined in 1844 by Article 11 of the Constitution, which stipulated that any individual has the right to establish a school with respect to the laws.<sup>6</sup> The constitutions enacted in 1864, 1911, and 1927 repeated exactly the above provision, while the constitution of 1952 maintained the same provision but also added that a license should be issued by the authorities for the legal establishment and operation of a private school.<sup>7</sup> Nevertheless, it is clear that all Greek Constitutions from 1844 until 1952 recognized the right of private education at all levels (primary, secondary, and tertiary).

The current Constitution, enacted in 1975, as it has been formulated after the interim revisions) stipulates in article 16 (8) that: "*The conditions and terms for granting a license for the establishment and operation of schools not owned by the state, the supervision of such and the professional status of teaching personnel therein shall be specified by law. The establishment of University level institutions by private individuals is prohibited*". Furthermore, article 16 (5) states that "*Education at University level shall be provided exclusively by institutions which are fully self-governed public law legal persons*". Finally, article 16 (2) provides that "*Education constitutes a basic function for the state and shall aim at the moral, intellectual, professional and physical training of Greeks, the development of national and religious consciousness and their formation as free and responsible citizens*". From

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<sup>3</sup> See Poulis, P. (2011). *The Law of Education and Institutions*. Sakkoulas publications. Athens – Thessaloniki, p. 260.

<sup>4</sup> See Mauria, K./Panteli, A. (1990). *Greek and Foreign Constitutions*. Sakkoulas publications. Athen-Komotini, pp. 46, 59.

<sup>5</sup> See Chatzichristou, S., Vasileiadis, M. (2011). *Private primary & secondary education in Greece; Challenges and perspectives*. Foundation for Economic & Industrial Research. Athens.

<sup>6</sup> See Mauria, K./Panteli, A. (1990). *Greek and Foreign Constitutions*. Sakkoulas publications. Athen-Komotini, p. 85.

<sup>7</sup> See Vegleris, F. (1983). *Private education and the limits of State intervention*. Nomiko Vima (Greek Journal), p. 161.

the above provisions it becomes clear that the following basic principles govern the establishment and operation of private schools in Greece:<sup>8</sup>

(a) Individuals are entitled to the right to private education. This freedom to establish privately-maintained schools is combined with a guarantee of the privately-maintained school as an institution. However, the right to establish and operate private schools applies only to general primary and secondary education. Concerning higher education, this is a state monopoly, excluding private initiative.

(b) The State shall supervise the establishment and operation of private schools because the responsibility of the citizens' education is a core mission of the State. That is to say, education is a public service that cannot be exercised by a private entity without state supervision. However, the state supervision should not aim or de facto lead to the weakening or obstruction of private education.<sup>9</sup>

(c) Any individual, a natural person or legal entity may apply for a license to establish a private school.

(d) The school proprietor shall have the right to run and organize the operation of the school at his discretion, within the limits set by the Constitution in Article 16 (2) and the laws. In this regard, the Council of State has decided that the individual right to private education gives individuals the freedom to establish private schools and provides for "*their free management and operation*".<sup>10</sup> The legislator may impose restrictions on the freedom of private education, provided that **such restrictions do not curtail the right** in question to such an extent as to impair its very essence and deprive it of its effectiveness.<sup>11</sup> On the other hand, the Supreme Administrative Court stated that the right to establish private schools is not simply a private enterprise in the context of free economic development, but a public service by a private entity and it is, therefore, subject to state control and supervision.<sup>12</sup> In this sense, given the special nature of education, it is justified that the state confronts the relevant private initiative with greater sensitivity and exercises more control over licensing procedures compared to other business activities either in product or service markets.

The legal right to establish, operate and attend private educational institutions is enshrined in various international treaties such as the Universal Declaration of Human Rights (1948), the United Nations Convention against Discrimination in Education

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<sup>8</sup> See Georgiadou, N. (2002). The working status of teachers in private schools, Deltio of Labor Law Publications, pp. 353, 354.

<sup>9</sup> See Dagtoglou, Pr, (1991). Constitutional Law – Individual Rights. A'. Sakkoulas Publications. Athens –Komotini, p. 723.

<sup>10</sup> See Judgment of the State Council 1670/1980, retrieved on 4.5.2020 from [https://lawdb.intrasoftnet.com/nomos/3\\_nomologia\\_rs\\_sub.php](https://lawdb.intrasoftnet.com/nomos/3_nomologia_rs_sub.php).

<sup>11</sup> See European Court of Human Rights, case of Leyla Şahin v. Turkey, no. 44774/98, the judgment of 10 November 2005, paragraph 154.

<sup>12</sup> See Judgment of the State Council 2376/1988 retrieved on 4/5/2020 from [https://lawdb.intrasoftnet.com/nomos/3\\_nomologia\\_rs\\_sub.php](https://lawdb.intrasoftnet.com/nomos/3_nomologia_rs_sub.php)

(1960), the International Covenant on Economic, Social and Cultural Rights (1966) and the European Convention on Human Rights (1950).<sup>13</sup>

Furthermore, private education is protected by Article 2 of the First Additional Protocol to the European Convention on Human Rights and Fundamental Freedoms, which was ratified in Greece by Legislative Decree 53/74 and thus gained increased formal power according to article 28 (1) of the Greek Constitution. Under Article 2, *"No person shall be denied the right to education. In the exercise of any functions which it assumes concerning education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions"*. In interpreting Article 2 of the Additional Protocol, the European Court of Human Rights has held that this provision guarantees an **individual right to education**, which is indispensable to the furtherance of human rights and plays a fundamental role in a democratic society.<sup>14</sup> While no direct reference is made to private institutions in Article 2, it is inferred that parents have the right to choose schools that meet their educational, religious and philosophical needs, and preferences whether public or private.<sup>15</sup> This has been confirmed in several cases, which recognized the fundamental right to education, without distinguishing between State and private schooling.<sup>16</sup>

However, the right to education guaranteed by Article 2 of the First Additional Protocol *"by its very nature calls for regulation by the State, regulation which may vary in time and place according to the needs and resources of the community and of individuals. It goes without saying that such regulation must never injure the substance of the right to education nor conflict with other rights enshrined in the Convention"*. The Convention, therefore, implies a **just balance** between the protection of the general interest of the community and the respect due to fundamental human rights.<sup>17</sup>

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<sup>13</sup> See Squelch, J. (1997). Private education in South Africa: The legal status and management of private schools. Ph.D. The University of South Africa, p. 105.

<sup>14</sup> See European Court of Human Rights. (2019). Guide on Article of Protocol No. 1 to the European Convention on Human Rights- Right to Education, retrieved on 6.4.2020 from [https://www.echr.coe.int/Documents/Guide\\_Art\\_2\\_Protocol\\_1\\_ENG.pdf](https://www.echr.coe.int/Documents/Guide_Art_2_Protocol_1_ENG.pdf).

<sup>15</sup> See European Court of Human Rights, Kjeldsen, Busk Madsen and Pedersen v. Denmark, the judgment of 7 December 1976, Series A, no. 23, pp.14, 15.

<sup>16</sup> See Squelch, J. (1997). Private education in South Africa: The legal status and management of private schools. Ph.D. The University of South Africa, p. 107.

<sup>17</sup> See European Court of Human Rights, Case "relating to certain aspects of the laws on the use of languages in education in Belgium" ("the Belgian linguistic case") (merits), the judgment of 23 July 1968, Series A no. 6, p. 32, para. 5, Case of Golder v. the United Kingdom, the judgment of 21 February 1975, Series A no. 18, p.15, paragraph 38.

According to the above, private schools serve the interests of the public and fulfill a public function. Therefore, they have to be subject to certain state regulations, which should aim at protecting the quality of private education for the sake of the whole society and the development of the whole educational system. However, the intervention of the State in the field of education cannot exceed the purpose described above and must be considered delimited by Article 16 (8) of the Constitution as well as Article 2 of the Additional Protocol to the European Convention on Human Rights.

### **The legislative framework of private education**

The basic law for private education in Greece is L. 682/1977 on Private Schools of General Education. This law, as it is in force today after considerable amendments, regulates the conditions for the establishment of private schools, state supervision, and the legal status of the teaching staff. At the same time, special reference should be made to the provisions of Law 1566/1985, which refer to the structure and operation of primary and secondary public education, but **also apply to private schools and their teaching staff**. This parallel validity of the majority of the laws issued for public and private education has now led to the general **assimilation of the organization and operation of private primary and secondary schools to the corresponding public ones** (ex. concerning the timetables and syllabuses, the organic composition of the teaching staff, the teachers' duties, the teaching hours, the holidays, even the salary policy, etc.).<sup>18</sup> The purpose of this assimilation is obviously to create an equivalent and united content of primary and secondary education, subject to the same State control, whatever the legal form in which it is provided. However, this effort for a uniform, homogeneous, and harmonized coexistence of private and public education has led to several incompatibilities and -among others- to an idiomatic employment status for teachers, who seem to be subject to private and public law at the same time.

### **The employment status of teachers in private schools**

#### **Hiring procedure**

Law 682/1977 provides a detailed description of the qualifications required for teachers in private schools, which are in no way inferior to the corresponding qualifications of teachers in public schools. Teachers, who wish to teach in a private school, provided that they are qualified, they are registered in the **Private Teachers' State Catalog**, upon request and approval by the Catalog's State Committee. Registration in this Catalog is a prerequisite for the validity of the employment contract and actually ensures a minimum level of qualifications, abilities, and skills of the teaching staff.

The school proprietor selects the teaching personnel from the catalog subscribers, without being bound by the order of registration. He then prepares the employment contract and **proposes** the selected teachers for appointment to the Private Education

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<sup>18</sup> See Georgiadou, N. (2002). The working status of teachers in private schools, *Deltio of Labor Law Publications*, pp. 353, 356 with citation in Greek scholars, Vegleris, F. (1989). The constitutional and legal problem of private education. To *Syntagma* (Greek Journal), p. 554.

Directorate, which is a decentralized agency of the Ministry of Education, with operating departments all around the country, responsible for the supervision of private primary and secondary schools, the quality assurance of education provided by them and the settlement of issues regarding the personnel and the employers. The Private Education Directorate approves the employment contract **and appoints the proposed teachers by issuing the appointment act** (Article 29 (1) L. 682/1977). During the school year, the teacher is not allowed to be assigned to a private school other than his initial appointment (Article 13 (4) L. 2986/2002).

The recruitment of the teacher is made, through the intervention of the State, by the Private Education Directorate. Of course, this authority is limited to checking the legitimacy of the proposal and it is not allowed to refuse the appointment of a teacher or to modify the terms of the proposed employment contract, as long as these conditions are in line with the legislation on private education. However, the issuance of acts by the Private Education Directorate creates **administrative disputes**, which fall **within the jurisdiction of the administrative courts**.<sup>19</sup> It must be pointed out that this hiring procedure exists only for teachers in private schools and not for other employees in sensitive sectors of activity such as private hospitals.

Despite the involvement of the Administration in the hiring process, law 682/1977 characterizes the relationship between the teacher and the private owner school as a **private working relationship** (Article 30 (1)). Indeed, the private teacher is subject to legal - personal and financial dependence on his employer, who directs and supervises his work and determines the time, place, manner, and other conditions of employment. The fact that the teacher develops certain initiatives in the performance of his work does not negate the element of dependence but this feature is inherent in the nature of educational work. However, although the nature of the teacher's contract as a private law employment contract is indisputable, its establishment depends on the issuance of an administrative appointment, which is an unusual feature in the private sector.

### **Teacher's employment contract**

#### **Current legislation**

By the recent law 4713/2020 that came into force on 29.7.2020, fundamental changes took place in the employment relations of private teachers. Firstly, the duration of the teacher's employment contract is exclusively determined as indefinite. This means that the parties do not have the option of concluding fixed-term contracts; teachers are employed under private law employment contracts of indefinite duration. Furthermore, law 4713/2020 stipulates that private teachers are dismissed like private-sector employees upon non – causal termination of their employment contract, which must take place after written notice and be accompanied by the compensation corresponding to the years of work of the dismissed employee under common labor law. These changes led private teachers' legal status into the core of private labor law and provoked strong protests from their trade unions, because private teachers -until

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<sup>19</sup> See Skouris, V. (1995). The law of education. Sakkoulas Publications. Thessaloniki, p. 113.

then- enjoyed a special employment status which in essence made their dismissal extremely difficult and complicated. In the following paragraphs we will present the previous working status of private teachers and we will interpret the new legislation in the light of the constitution.

### **The previous legal status**

According to the previous legal status, the duration of the teacher's employment contract was also determined by the legislator (Article 30 (2) and (3) L. 682/77 as it was amended by Article 56 L. 4472/2017 and Article 84(3) L. 4547/2018). At first, the contract had a duration for two years; beginning on the day the teacher started working at school and ending on August 31 of the second year. At this time, the employer could terminate the contract. After the expiration of the two years' duration and if the contract was not terminated as above, **it would lawfully become an indefinite term contract**. The peculiarities of the employment relationship of teachers were obvious; the fixed-term employment contract did not expire automatically at the time of its expiration as all fixed-term contracts in the private sector do, but it should be terminated by the employer. Then the conclusion of the indefinite-term contract was not the result of the private will of the parties but the result of the legally imposed conversion of the fixed-time contract to an indefinite-term one.<sup>20</sup>

After the conversion of the contract into a contract of indefinite duration, **the termination was allowed for specific reasons** that were **restrictively listed** by law after following **a specific procedure**. So, the teacher's contract entered into **“a status of permanence”**, deviating from the status of private law employment relationships.<sup>21</sup> Particularly, according to Article 30 of L. 682/1997 as it was amended by L. 4472/2017 and L. 4547/2018, the contract of indefinite duration could only be terminated for the following reasons:

(a) *"If the employer proves a sufficiently justified disturbance of the educational climate at school due to the lack of employer-teacher cooperation"*. This was a vague concept that could be interpreted in various ways depending on the ideas and perceptions (and possibly the intentions) of the person judging. However, this ambiguity, apart from the fact that it did not serve the purposes of education, also did not meet the conditions of legal certainty that must govern the termination of employment contracts.<sup>22</sup>

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<sup>20</sup> See Liksouriotis, I. (2012). The working status of private teachers and the end of “permanence”. Labor Law Review (Greek journal), pp. 1445, 1447.

<sup>21</sup> See Leventis, G. (2012). The legal framework of the termination of the private teachers' employment contract. Labor Law Review (Greek journal), pp. 1427, 1435, Liksouriotis, I. (2012). The working status of private teachers and the end of “permanence”. Labor Law Review (Greek journal), pp. 1445, 1452.

<sup>22</sup> See Georgiadou, N. (2002). The working status of teachers in private schools, Deltio of Labor Law Publications, pp. 353, 362. Except for these reasons, the employment contract of the teacher is terminated due to death, deduction from office, or the acceptance of the teacher's resignation.

(b) *"Shutdown of school unit"*.

(c) *"Abolition of classes"*. In this case, it was permissible for the employer to dismiss those who have the least time-service in education and their working hours were eliminated to zero. As a result, the employer did not have the right to keep in school the most efficient or productive or capable or even lovable teacher, but the one who had the biggest time-service. Besides, the release was permitted only in the case that the working hours of the released teacher were eliminated to zero and not just reduced.

(d) *"Completing the age of 70"*.

(e) *"Private teachers are dismissed by the owner of the school in which they serve because of:*

*(aa) physical or mental incapacity ascertained by the competent State Primary Health Committee and, after an objection, by the State Secondary Health Committee;*

*(bb) filling in the time of service which establishes the right to receive a full pension from a private teacher insurance institution. In this case, the termination of the employment relationship occurs at the end of the academic year;*

*(cc) the imposition of the disciplinary penalty of dismissal by the disciplinary board;*

*(dd) teaching, pedagogical inadequacy or professional inconsistency based on at least two (2) reports relating to at least two (2) consecutive years of teaching based on criteria that will be set by the Institute of Educational Policy; the first report is drawn up by the Director of the school unit and it is notified to the School Counselor and the second report is drafted by the Director of School Unit and it is notified to the School Counselor who adds a report if he deems it appropriate and especially if his opinion differs from that of the Director"*.

The Institute of Educational Policy never specified the required criteria and the application of the above provision was rather difficult and problematic. If we followed the wording of the law, then the school proprietor had the right to release teachers who were objectively inadequate or inconsistent but he had no right to release teachers who could not cooperate with their colleagues or did not meet the school's goals or had lower efficiency than school standards, etc. In other words, there were many reasons for the release of a teacher that did not fall **within the concept of "inadequacy" or "inconsistency"** and yet the employer was deprived of the right to release a teacher for any other reason than the above mentioned.<sup>23</sup> Moreover, even if there were a problem of "inadequacy" or "inconsistency", the measure of release could not be taken immediately but after *"at least two (2) reports relating to at least two (2) consecutive years of teaching"*. Indeed, such restrictions were **not compatible with the function and characteristics of a private law relationship** and, furthermore, opposed the constitutional right of the proprietor to run and manage the

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<sup>23</sup> See Leventis, G. (2012). The legal framework of the termination of the private teachers' employment contract. Labor Law Review (Greek journal), pp. 1427, 1436.



private school in the way he believes to be more successful and effective, precisely to have a competitive advantage over other private schools and public schools as well.

The legality of the termination of the employment contract for the reasons above was decided by a **Commission**, which examined whether the employment contract was legally terminated and whether the termination was abusive or not and decided accordingly. This Committee consisted of three Judges. The school proprietors' and teachers' trade unions had the right to be represented in the committee, each one by one representative as an observer, without vote right.

The above Committee, after taking into consideration the service reports, decided about the legality of the contract termination within ninety (90) calendar days and submitted its proposal to the competent Director of Private Education Office. The Director should have the competence to issue a decision on dismissal or non-dismissal of the teacher, following the content of the Commission's proposal within three (3) days of the submission of the proposal. The decision should be notified to the interested parties. If there were no proposal by the Committee within the above deadline, the lawfulness of the contract termination should be presumed. After the issuance of the Director's act, which was an **individual administrative act**, the interested parties could appeal to the competent **administrative courts**. Dismissals, which did not comply with the above procedure, were void. The whole procedure was time-consuming and opposed the need for a speedy resolution of labor disputes, which is a basic principle in many labor laws.

Besides, the existence of specific reasons as a precondition for terminating the contract of indefinite duration **deviated from the general rule of non-causal termination** and created an exception for a very wide category of employees without serving any obvious public interest. The right to release only employees with specific characteristics of incapability or inadequacy and compulsorily retain all others, we wonder how it upgraded the quality of education in general and ultimately how the state was constitutionally legitimized in such a substantial and catalytic intervention. The employer should have the right to dismiss the employee if this act serves the legitimate interest and the proper operation of the school for which he is responsible, both at the legal and educational level. On the other hand, if the reason for dismissal is unfair, this is judged by the labor courts based on the provisions of the Civil Code which prohibit the abuse of rights. So far, the courts have created a rich case law on the issue of abusive dismissals and could adequately and satisfactorily cover the cases of dismissal of private teachers as well.

### **Evaluation of the legal framework in the light of the Greek Constitution**

The Greek Constitution guarantees economic freedom as an individual right (Article 5(1)). This is a fundamental freedom, which includes the freedom to exercise an economic or commercial activity and the freedom of contract in general.<sup>24</sup> On this freedom, the law may impose restrictions, which must be generally defined

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<sup>24</sup> See Dagtoglou, Pr. (1991), *The Constitutional Law – Individual Rights*, B', Sakkoulas Publications, Athens – Komotini, pp. 993, 996.

objectively and justified by sufficient reasons of public or social interest and be relevant to the object and character of the regulated activity. In view of the principle of proportionality, the restrictions imposed by law must be appropriate and necessary to achieve the public or social interest pursued by the legislature and must not be disproportionate to it, while the substance of the restricted freedom must be left in any case untouched.<sup>25</sup>

The previous legislative status of working conditions in private schools, in our opinion, was not following the Constitution.<sup>26</sup> As has been said, the proprietor has the right to run and organize the operation of the school at his discretion, within the limits set by the Constitution in Article 16 (2). The selection of the teaching staff is an essential part of the proprietor's right to run the school. He, more than anyone else, wants to rely on worthy, capable, educated, and qualified teachers who will bring success, fame, and profitability to the school. Therefore, the recruitment of teachers compulsorily under a two years' employment contract and the consequent conversion of this contract to an indefinite term contract constituted inadmissible restrictions on the freedom of the school proprietor to select the teaching staff and organize the operation of the school. Things could be judged differently only if the lawmaker, while securing the job of private tutors, also ensured the reasonable interests of school proprietors. However, this was not the case, because strict restrictions had been imposed on the proprietors' right to terminate teachers' employment contracts, **leading to a permanent commitment**, which was not compatible with the personal and economic freedom as described above. The State, of course, has the obligation to supervise private education so that the teachers at private schools are equally qualified to their colleagues in public schools and the pedagogical work of private schools is at least equal to that of public schools, but the State was **not legitimized to substitute the school proprietor** in crucial decisions about the operation of his enterprise. Of course, it must be repeated that the management right is neither unlimited nor absolute, but it is subject to the necessary restrictions in order to ensure the reasonable and legitimate interests of the employee. For this reason, in Greece, as in most European countries, there is a strong protective labor and civil law, which has been developed by our jurisprudence into a **law protecting workers against employers' abusive behaviors**.<sup>27</sup> So, from our point of view, there was no legal ground for the creation of a special category of employees that enjoyed conditions of permanence in the context of a private contractual relationship.

Moreover, even if the above restrictions were considered to be justified in the context of the State obligation to protect the general right of education as described in Article 16 of the Constitution, it is doubtful whether these restrictions complied with the

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<sup>25</sup> See Judgments of State Council 203/2020 retrieved on 6.5.2020 from [https://lawdb.intrasoftnet.com/nomos/3\\_nomologia\\_interpretations.php](https://lawdb.intrasoftnet.com/nomos/3_nomologia_interpretations.php).

<sup>26</sup> See opposite judgment of the Council of State 622/2010 retrieved on 2/5/2020 from [https://lawdb.intrasoftnet.com/nomos/3\\_nomologia\\_rs\\_sub.php](https://lawdb.intrasoftnet.com/nomos/3_nomologia_rs_sub.php).

<sup>27</sup> See Zerdelis, D. (2002). The law of termination of the employment contract. Sakkoulas Publications, p. 221 with further citations to scholarship.

principle of proportionality in the sense that there must be a tolerable proportionality relationship between the measures taken and the purpose pursued by each measure.<sup>28</sup> In our view, the severity and extent of the restrictions imposed on the school proprietor were not in reasonable proportion to the benefit, which was expected to arise for the general education from securing the position - and not the quality - of the teacher's work for an indefinite period, if there was any benefit at all. The relevant provisions should, therefore, be considered incompatible with the fundamental principle of proportionality.

## CONCLUSION

The new legislation, in our opinion, balances the constitutional interests in proportion. On one hand, the establishment of the working relationship is still subject to strict administrative conditions and strict administrative procedures, which focus on ensuring a minimum level of qualifications, abilities, and skills of the teaching staff. On the other hand, the school proprietor has the right to exercise his managerial right within the framework of the general provisions of labor law and take the measures that in his judgment serve the well-understood interest of his school, without the prior approval of the State. The teacher's employment relationship comes closer to private law contracts, leaving space to private initiative and private will and thus coming in compliance with the constitutionally guaranteed free development of personality and free economic development.

The previous regulation revealed a negative prejudice of the Greek state towards private education, which has been treated for decades a priori more as a suspect violator of the law rather than a parallel educating pole. It is obvious that the existence of private education has been evoking controversial debate concealing perplexing moral, philosophical and ideological concerns about social exclusivity, selectivity, and elitism.<sup>29</sup> Notwithstanding the social and political arguments for and against private education, private schools in Greece form an essential part of the educational system and the choice of private education should be treated as a democratic right, which derives from the Constitution in harmony with the international treaties.

It is time that the legislation focuses on securing the quality characteristics of private education such as the qualification of the teaching staff and the school directors, the suitability of the people running the school, the quality of leadership and management, the adequacy and functionality of school programs, etc. Conditions of employment for teachers in the private schools should follow the labor law and the collective labor contracts, while exceptional provisions could be established to some extent for the regulation of special issues (ex. dismissal of a teacher during the school

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<sup>28</sup> See European Court of Human Rights, *Leyla Şahin v. Turkey* [GC], no. 44774/98, judgment of 10 November 2005, p. 38, paragraph 159.

<sup>29</sup> See Squelch, J. (1997). *Private education in South Africa: The legal status and management of private schools*. Ph.D. The University of South Africa, p. iii.

year). The school supervisory authority must monitor whether the quality criteria on the basis of which approval was granted are being respected and can withdraw approval if these criteria are no longer being met. On the other hand, the administrative suffocation over private schools does not serve any public interest, does not fall within the scope of the Greek Constitution, and international treaties, and certainly does not make private education better.