



Article title: Critical explorations on the constitutional protection of decent living under the influence of poverty statistics: The case of Greece

Authors: Styliani (Stella) Christoforidou[1]

Affiliations: Hellenic Open University, Public Administration dep.[1]

Orcid ids: 0000-0002-6576-0284[1]

Contact e-mail: christoforidoustyliani@yahoo.gr

License information: This work has been published open access under Creative Commons Attribution License <http://creativecommons.org/licenses/by/4.0/>, which permits unrestricted use, distribution, and reproduction in any medium, provided the original work is properly cited. Conditions, terms of use and publishing policy can be found at <https://www.scienceopen.com/>.

Preprint statement: This article is a preprint and has not been peer-reviewed, under consideration and submitted to ScienceOpen Preprints for open peer review.

Links to data: there are no data, it is not that kind of research

Funder: No

DOI: 10.14293/S2199-1006.1.SOR-.PP3F5CB.v1

Preprint first posted online: 15 July 2022

Keywords: human dignity, decent living, poverty, statistics

Critical explorations on the constitutional protection of decent living under the influence of poverty statistics. The case of Greece

Abstract

The protection of decent living is, since 2019, a constitutional obligation in the Greek legal order. The new constitutional provision which followed the constitutional amendment made the term decent living a legal term. Based on this development the question that arises is if it is still possible for the legislature and the courts to use the results of statistics of poverty as empirical data for the protection of decent living, given that poverty statistics quantify the term poverty, a term with different content comparing with the term decent living. The study aims to demonstrate the implications of the use of poverty statistics to the quality and effectiveness of protection of decent living and to propose new ways for the implementation of social statistics to judicial control for the protection of decent living. The main argument is that protection of socio-economic rights must follow the example of the environmental protection as far as the impact to decent living status is concerned.

Introduction: The socio-political context

Since the outburst of the financial crisis in Greece in 2011, living conditions have been deteriorated, the inequalities have been augmented and the constitutional protection of social rights have been weakened. The legislature had to deal with severe budgetary deficits, so, focused on poverty statistics to define the portion of the population that will be protected as well as to shape the content of that protection. There are plenty of examples where the law-makers based on social statistics to ensure social rights. For example, in Ministerial Decision 131758 / Z1 / 10.8.2018 (Government Gazette II,3387), for exemption from paying tuition fees on postgraduate programs, it is stipulated that the exemption applies to those students whose *total median equivalent income* does not exceed the *national total median equivalent income*. In addition, according to the explanatory memorandum to the law "Unified Social Security System - Insurance-pension system reform" (page 2), "[The] establishing of the national pension at 384 euros was based on 60% of earnings according to the European Union", whose rules refer to the quantitative techniques of poverty measurement. In fact, 60% of the [median equivalent] income is the poverty threshold.

In the meantime, the Greek Constitution was amended, in 2019, and a new constitutional provision was added, according to which "the State ensures 'decent living conditions' for all citizens through a system of minimum guaranteed income" (Art. 21 par. 1b). The recognition of the right to a decent living was considered as a victory of the Greek legal literature which argued for two decades ago that the right to a decent living derives from the social state principle of Article 25 of the Greek Constitution.

Despite the added value of the notion of decent living to the constitutional protection of social rights, the meaning and the implementation of the right was undermined due to improper use of poverty statistics by the legislature and, occasionally, by the Greek courts. As it is analyzed below, the decent living condition were downsized to a mere physical existence under the influence of the notion of absolute poverty. The substantive equality and the obligation of gradation under the progressivity principle which the Greek Constitution under the Article 4 (5) imposes when it comes to financial treatment have been downgraded to a binary system of poor and non-poor excluding major proportions of the population from the constitutional protection of a decent living. Last but not least, the income lost its substantial use by the adoption of the results of statistical measurements of poverty which do not take into consideration the cost of living. All these misuses of poverty statistics had as a consequence the distortion of the decent living as legal term.

The study adopts the interpretive method for the notion of decent living and its content (under I.A) and the interdisciplinary approach to evaluate the implementation of the social statistics to state policies and judicial protection of social rights (under I.B and C.). In the last part (under II.) of the study some proposals are included regarding the implementation of social statistics to the constitutional term decent living in a way that could cover the meaning and content of decent living under the light of constitutional interpretation.

I. The Tower of Babel: saying ‘decent living’, meaning ‘poverty’ and the implications for the judicial control of constitutionality

A. The notion of decent living

1. According to the proceedings of the constitutional amendment of 2019

The notion of “decent living” first adopted by PASOK, a center-left political party, which proposed the introduction of the right in the constitutional text during the previous constitutional amendment of 2008. The proposal at that time concerned the recognition of the state's obligation to ensure a minimum guaranteed standard of living¹, considered as the sine qua non of every social right of the Constitution, and thus laying the foundations for an acquis of social rights². The proposal, according to the proceedings, included a horizontal supplementary allowance, the "minimum guaranteed income"³ taking its cue from the basic income approaches⁴. New Democracy, a center-right ruling party, did not support this

¹ *Praktika Sintagmatikis Anatheorisis [Proceedings of Constitutional Amendment]*, XI Period, Session B: 26.9.2007.

² G. SOTIRELIS, *SINTAGMA KAI DIMOKRATIA STIN EPOHI TIS PAGKOSMIOPIISIS [CONSTITUTION AND DEMOCRACY IN THE ERA OF GLOBALIZATION]* 348 (2000).

³ *Supra* note 1, at Session III, 2.

⁴ LFM GROOT, *BASIC INCOME, EMPLOYMENT AND COMPENSATORY JUSTICE* 27-52 (2004)

proposal because it contended that the concept of “decent living” was broader than an additional cash benefit. This additional cash benefit, they argued, could in any case be granted by law without a previous constitutional amendment⁵, while the right to a decent living was already protected through Article 2 (1) (human dignity principle) and Article 5 (1) (freedom of personality development) of the Greek Constitution.

At the constitutional amendment of 2019, New Democracy, SYRIZA, a left-wing party, and the Democratic Alliance (PASOK and the Democratic Left), proposed the introduction into the Constitution of the right to decent living. It should be noted that in the first phase of the constitutional amendment, SYRIZA was the ruling party and New Democracy was the official opposition, while, in the second phase of the procedure, i.e. after the elections, their positions had been reversed. The severe fallout from the financial crisis of the last decade and the jurisprudence on decent living protection as a constitutional limit of austerity measures weighed in on the parties’ proposals of constitutional amendment, though there was not a broad consensus on the content of the new constitutional provision.

SYRIZA and the Democratic Alliance wanted to broaden the constitutional protection of decent living to the social - public services⁶ and safeguard expressis verbis universal access to social goods⁷. On the other hand, New Democracy insisted on a cash social welfare system named “minimum guaranteed income”, i.e. the basic income system. From that point of view, the first two proposals were closer to a broader understanding of the notion of decent living, contrary to the proposal of New Democracy that emphasized only to a mere cash benefit support. Despite the fact that arguments from all the sides were concentrated on the scope of the decent living, mainly whether would cover the access to social services or would be restricted to a mere cash benefit, the main problem, that of calculation of the amount, or previously, that of definition of the notion was underestimated.

Decent living is a term that is in common use in everyday life in the Greek society. Perhaps, this is the reason that the political parties during the constitutional amendment gave no emphasis on shaping the idea of the decent living but focused on the constitutional tools that could safeguard the decent living. At the same time, it must be highlighted that the right to decent living was entered the constitutional text, for first time in the history, without any previous social pressure, given that all the rest civil and social rights recognized after social claims⁸. In other words, the notion of “decent living” was not the product of social ferment or public debate, and therefore, the concept of decent living entered the constitutional order without a clear empirical context that could shape its content.

Within this framework, technocratic perceptions such as the poverty schemes for the application of quantitative measurements found the way to penetrate the constitutional tissue guiding the ways of implementation of decent living protection in a way that finally, what was protected was not the decent living but a mere physical existence. Still, the term

⁵ *Supra* note 1 at Session II, 10.

⁶ See *Protasi Sintagmatikis Anatheorisis SYRIZA* (4636/2.11.2018) [Explanatory Memorandum by the SYRIZA Parliamentary group].

⁷ *Supra* note 1, at Session I, 37.

⁸ For a short history of social rights, see, D. Garland, *On the Concept of ‘Social Rights.’* 24 *Social & Legal Studies* 4,622-628.

“decent living” even in its common use has a very specific meaning which derives from the Greek culture and history. This meaning can be found in all social movements (labor, student, and popular movements in general)⁹, since slogans such as ‘bread, education, liberty’ which are historically associated with the end of the military dictatorship in Greece. In other words, the social claim for a decent standard of living can be found in all movements, including those of the postmodern era, such as the LGBTQ community, which claim equality and freedom.

From this point of view, the notion of a decent living already existed even before its introduction into the constitution, and thus, because it is strongly connected with the human dignity principle. The purpose of decent living can be found in the constitutional text in all those provisions that form the socio-economic life of the country to ensure socio-economic mobility and security in terms of freedom and human dignity.

2. Through the constitutional interpretation

The overarching basis of decent living is the human dignity principle. The human dignity principle establishes the framework for the content and functions of decent living. It does not only concern the state’s interventions, but also society’s interventions and can be “either defensive or beneficiary, materialistic or idealistic”¹⁰. Thus, human dignity has a complex content, both individualistic and social¹¹. In the German legal order, the human dignity principle is systematically interpreted as the freedom of personality development and is understood as the freedom of self-determination of the individual to achieve their own goals¹². The prevailing view is that each specific constitutional provision specifies the content of human dignity and protects a form of freedom in order to ensure the protection of human dignity¹³.

⁹ F. FUKUYAMA, *THE END OF HISTORY AND THE LAST MAN* 173-208 (1992).

¹⁰ P. Häberle, *Ennoia kai periexomeno tis anthropinis axiophepeias*, journal ‘The Constitution’, 1982, 222 [Concept and content of human dignity].

¹¹ *Id.*, at 225.

¹² A. Gruner, *Der verfassungsrechtliche Anspruch auf Gewährleistung des Existenzminimums* [The constitutional right to guarantee the subsistence level], *Journal für Rechtspolitik* 17, 202–213 (2009), R. Hursthouse, *Human Dignity and Charity*, in, *PERSPECTIVES ON HUMAN DIGNITY : A CONVERSATION*, 59 (J. Malpas, N. Lickiss eds. 2007)

¹³ *Id.*, at 202–213. J. Weinrib, *Human Dignity and Autonomy*, in *MAX PLANCK ENCYCLOPEDIA OF COMPARATIVE CONSTITUTIONAL LAW [MPECCOL]* 5 (R. Grote, F. Lachenmann, R. Wolfrum eds. 2020).

Under German case-law, a welfare allowance is granted to secure the *Existenzminimum* and to guarantee the protection of fundamental rights¹⁴. Thus, prevention from poverty, which is limited to the provision of food, clothing and housing, i.e. biological maintenance, is not consistent with human dignity because it does not ensure the development of the individual, that is to say, it does not enable alternative prospects¹⁵. The possibility of alternative perspectives is based on the Greek legal order on the freedom of personality development of Article 5(1) Gr. Const.

Shaping the content of decent living through constitutional interpretation and mostly through human dignity principle has as a consequence to limit the living conditions that can be described under this term. Poverty line, when it comes to results of measuring poverty that adopted by the legislature or the courts, is measured based on indices that do not fulfill constitutional obligations of protection because they mostly emphasize to mere physical existence. Furthermore, beyond income-based indices, quality of life may also refer to non-materialistic prerequisites and especially to criteria that do not have economic significance. It should be stressed that, according to Article 24 Gr. Const. on environmental protection, the state is obliged to safeguard the best possible *living conditions*. So even in cases that a study is needed to support judicial assessment or the legislature for the calculation of the amount of an income, a strictly economic manifestation of the notion of decent living, there is the obligation of adopting indices that refer to aspects of life such as the above. For example, if the amount of the income permits someone to reside to a place that does not suffer from environmental degradation.

From the other hand, in cases that a study applying quantitative methods is not needed for the judicial decision or even the political decision, human dignity principle sets an interpretative limit regarding the content of decent living which cannot be downgraded to the mere existence. Thus, even when other terms such as biological maintenance are used by judicial reasoning or the law¹⁶, (or basic standard of living¹⁷, minimum level of decent living¹⁸, basic needs¹⁹), to describe living conditions, in light of Article 2 (1) Gr.Const. the real meaning is *decent living according to the human dignity principle*.

The Greek Council of State in a landmark decision provided a definition of 'decent living' which adopted by German jurisprudence and the notion of *Existenzminimum*, according to which 'decent living' not only refers to the conditions of physical existence (food, clothing, housing, basic household goods, heating, health and medical care at all levels), but also to

¹⁴ BVerfG, Judgment of the First Senate of 9 February 2010 - 1 BvL 1/09 -, 134. E. J. Eberle, Observations on the Development of Human Dignity and Personality in German Constitutional Law: An Overview, *Liverpool Law Rev* (2012) 33:201–233, 206.

¹⁵ Gruner, *supra* note 12, at 202–213.

¹⁶ Greek Council of State Decision n° 1311/2002.

¹⁷ Greek Court of Audit [GC] Decision n° 1388/2018.

¹⁸ Greek Council of State [GC] Decision n° 1087/2017.

¹⁹ Greek Court of Audit [GC] Decision n° 477/2014, 2287/2005.

the *participation in social life*²⁰. It should be noted however that the case concerned the reduction of social insurance which means that pensioners have previously contributed financially as employees or workers, in contrast to the social welfare system in which the Existenzminimum benefit is a part in the German legal order, where this benefit is given regardless of previous contributions. Furthermore, in decisions that followed concerning other cases, such as taxes, public pensions or benefits, the same court ignored its own definition and returned to the “minimum level of decent living”²¹, that is to say, the poverty condition.

That said, the recognition of social participation as a basic element of the notion of decent living constitutes a real breakthrough because it is the first time that the literature obtains support from jurisprudence to delimit the use of statistics on poverty in the law. As has been established, absolute poverty corresponds only to physical existence, while, relative poverty, although based on income, does not consider the cost of living²², a very substantive aspect of decent living condition. Given the above, the social participation as aspect of decent living right is crucial. The use of statistics on poverty in the law leads ineluctably to the violation of the right to decent living since the possibility of social participation is absent.

B. The erosion of the meaning

1. Seeking the absolute to find the limits

Probably Sayer has a very good point highlighted that the social sciences found in mathematics, and particularly in statistics, the way to overcome their conflicting nature²³. It is known that mathematics is a purely formal language which means that can apply to everything or nothing and for that reason, the main question arises regarding their applicability²⁴. Newton devised a mathematical method capable of converting the principles of physics into quantifiable and measurable results verified by observation²⁵. Many social scientists hope that by adopting the right (statistical) method, it will lead them to discover social rules quantifiable and measurable as the rules of physics²⁶.

Instead of that purpose, poverty statistics nowadays challenge the observation of the real world and the empirical assessment. For example, it is known that regarding the cost of

²⁰ Greek Council of State [GC] Decision n° 2287/2015. See the same definition in BVerfG, Judgment of the First Senate of 9 February 2010 - 1 BvL 1/09 -, para. 135. (as in note 14 above). The Greek Court in its decision strictly refers to the decision of the German Court.

²¹ See, e.g., Greek Council of State [GC] Decision n° 1087/2017.

²² See below at II.A.

²³ A. SAYER, *METHOD IN SOCIAL SCIENCE, A REALIST APPROACH* 175 (1992)

²⁴ *Id.*, at 176.

²⁵ *Id.*, at 176.

²⁶ *Id.*, at 175, see, G. Sartori, *Concept Misformation in Comparative Politics*, *American Political Science Review*. 1042, 1033-1053 (1970).

living in Greece it is highly impossible for anyone to live on, even in terms of the mere physical existence, based on an income of 384 euros as it mentioned above. Still, given that this amount is based on the results of poverty statistics it is very difficult to challenge on the court and ask for the protection of decent living right.

However, the main question is the reason that in the law we ended up to search for criteria of protection that are approach the absolute poverty. As Sayer stresses out quantification can apply to objects and processes that are qualitatively unchanged so that they can be separated and reunited without changing their nature. This means that they remain the same between different times and places, under different conditions²⁷. Therefore, the definition of 'decent living' as housing, food and water - a reflection of absolute poverty and, at the same time, the immutable human need beyond space and time – and then the quantification with these criteria, does not guarantee the decent living. In other words, between the term (decent living) and its definition, which is in fact the description of some of its component parts there is not a relationship such as there is for instance between hydrogen 2 and oxygen, which when combined give water and when the water decomposes gives hydrogen 2 and oxygen. Seeking certainty, that uncontroversial place that can be measured without any doubt, and serving also the purpose of comparability, applied socio-economic sciences have moved in the direction of describing conditions a world away from the notion of decent living. Material deprivation, or the inability to possess²⁸, describes this undeniable, unchangeable, absolute condition that can also gain broad agreement at a political level which may result in intervention and protection. Employing an absolute is not only the easy way to apply statistics in social conditions, but also the easy way to set limits for the policy-makers²⁹.

2. The problematic adaptation of the notion in the Greek legal order

a. The absolute poverty as the absolute limit

Apart from the influence of the poverty statistics that mostly affect the Greek legislature, the Greek jurisprudence fell under the influence of the ECtHR jurisprudence which protection is also orientated to the standard of absolute poverty. In particular, regarding the jurisprudence of ECtHR, the question of standard of living can be found in Article 3 ECHR and 1 of the First Protocol. The ECtHR, as a Court that seeks consent and not as a mechanism to

²⁷ Id., at 176. See an attempt regarding poverty statistics where is stated that “*We see the DLS [Decent Living Standards] as a set of material conditions that people everywhere ought to have, no matter what their intentions or conception of a good life, or what other rights they may claim*”: N. Rao, J. Min, Decent Living Standards: Material Prerequisites for Human Wellbeing, Soc Indic Res (2018) 138:225–244, 226.

²⁸ See, for the different forms of measurement, I. Petrillo, *Computation of Equivalent Incomes and Social Welfare for EU and Non-EU Countries*, CESifo Economic Studies, 400 396–425(2018).

²⁹ See, on philanthropy, S. MOYN, NOT ENOUGH. HUMAN RIGHTS IN AN UNEQUAL WORLD, 196, 151-153.

protect social rights in the first place, reduces protection to the condition of physical existence, i.e. absolute poverty³⁰. In *Koufaki and ADEDY v. Greece*, concerning austerity measures, the ECtHR states that ‘the extent of the reduction in the first applicant’s salary was not such as to **place her at risk of having insufficient means to live on** and thus to constitute a breach of Article 1 of Protocol No. 1’³¹. In another case-law, the ECtHR states that ‘[I]t cannot be said that pensions [...] are at such a low level as to **deprive the applicants of the basic means of existence**’³².

According to the texting, the standard of living that is protected through ECtHR jurisprudence is not that of a decent living as a constitutional term. Moreover, both Greek and German jurisprudence and literature recognize that decent living is not mere biological existence, but the real possibility of social participation. This dimension lacks the protection framework in ECtHR case-law.

Although, this form of protection is below the quality of protection that the Constitution requires, Greek courts adopt the jurisprudence of ECtHR. For example, the Greek Court of Audit states, with regard to pensioners that, according to the first Protocol of the ECHR, they are not at risk of being deprived of their basic means of existence³³. The most important aspect of this is that the Greek courts adopt this interpretation also for Article 2 para 1 Gr.Const. Greek jurisprudence accepts that Article 2 of the Constitution, which protects human dignity, *as in Article 1 of the First Protocol ECHR*, does not guarantee a certain amount in benefits or pension, unless there is a risk to “*decent living*”³⁴, meaning literally “*basic means of existence*”, given that the ECtHR case-law is adopted.

There is, however, the contrary interpretation, that is to say, of adopting German jurisprudence. In such cases, Greek courts have attributed the violation of the Constitution to an omission of the law maker, when adopting the austerity measures to safeguard a “minimum standard of decent living” according to Article 2 para 1 Gr.Const., i.e. the Existenzminimum³⁵. Hence, it would appear that the notion of ‘decent living’ lies under the

³⁰ M. Dollé, *Entre le salaire minimum et le revenu minimum, faut-il une allocation compensatrice de revenu?* (Between the minimum wage and the minimum income, is there a need for an income compensatory allowance?) *Droit social* 359 (2000).

³¹ ECtHR *Koufaki and ADEDY v. Greece*, n° 57665/12 and 57657/12, decision of 7.5.2013, *see also*, ECtHR *Mockienė v. Lithuania*, n° 75916/13, decision of 27.07.2017.

³² ECtHR *Stefanneti and others v. Italy*, n° 21838/10, 21849/10, 21852/10, 21855/10, 21860/10, 21863/10, 21869/10 and 21870/10, decision of 15.4.2014. *See also* ‘Moreover, the cap, while sometimes – but not always – resulting in considerable reductions of the nominal amount of their monthly pensions, did not totally divest the applicants *of their only means of subsistence*’, *Valkov and others v. Bulgaria*, n° 2033/04, 19125/04, 19475/04, 19490/04, 19495/04, 19497/04, 24729/04, 171/05 και 2041/05, decision of 25.10.2011. (As above at 31)

³³ Greek Court of Audit [GC] Decision n° 992/2015.

³⁴ *See, e.g.*, Greek Council of State Decision n° 668/2012 [GC], para. 35, 3783/2015.

³⁵ Greek Council of State Decision [GC] Decision n° 668/2012, para. 36, dissenting opinion.

influence of two different legal cultures, German and the ECtHR jurisprudence and struggles between the poverty and the dignity. When the first is adopted, the austerity measures violate the Constitution, while when the second is cited, no such violation occurs.

b. The absolute poverty as eligibility criterion for the protection of decent living

Greek courts adopted the notion of Existenzminimum of the German legal order to beef up the protection in the face of the austerity measures during the financial crisis. The definition of 'decent living' that the Greek Council of State has provided is the translation of the definition of Existenzminimum from the landmark decision of the German Federal Constitutional Court Hartz IV³⁶. However, as already mentioned, this case-law did not pertain to the social welfare system. That said, the Greek courts did focus on the poor and the most economically vulnerable groups in society, transforming almost every case into a battle to protect them, regardless of the fact that the cases did not actually belong to the social welfare system, but rather concerned salaries, tax burdens, pensions etc. Very soon, under the influence of statistics of (income) poverty³⁷, the personal income criterion to evaluate the (un)constitutionality of each austerity measure was applied.

In a case involving the abolition of the pension for trade union representatives, the Court found that there was no constitutional breach because the contesting party (litigant) was still receiving a pension provided for *another reason*, and because the legislator took care of the 'most vulnerable groups', to whom, exceptionally, the above pension was still paid if they no longer worked and did not receive a pension from another insurance fund or the State³⁸. It is rather paradoxical that the protection of decent living led to the removal of a benefit on the grounds that the specific person has *other incomes to provide themselves with a decent living*. Most of all, this benefit was never intended to protect the decent living right, but the right to be in a trade union. Consequently, it was provided under another constitutional provision and not that of the social care of the (income) poor.

Another paradox based on income poverty followed concerning tax exemption from the income tax of large families (4 children or more). According to Article 21 para 2 Gr. Const., the state has the obligation to protect large families. Ruling on the lack of tax exemption for these families, the Court stated that the legislator is free to choose either the form of tax exemption for the protection of large families or the form of benefits, or a combination of the two³⁹. It would appear that the concept of "income"⁴⁰ is rather liquid⁴¹ and may either

³⁶ BVerfG, Judgment of the First Senate of 9 February 2010 - 1 BvL 1/09 -. I. T. Winkler and C. Mahler, Interpreting the Right to a Dignified Minimum Existence: A New Era in German Socio-Economic Rights Jurisprudence?, *Human Rights Law Review* 13:2(2013), 388-401.

³⁷ See, below at II.A.

³⁸ Greek Council of State Decision no 660/2016.

³⁹ Greek Council of State Decision [GC] Decision n° 1087/2017.

⁴⁰ A. SUPIOT, GOVERNANCE BY NUMBERS, THE MAKING OF A LEGAL MODEL OF ALLEGIANCE, transl. Saskia Brown, Hart, 2017, 82.

be provided or detached and, irrespective of that, it is the result that matters (i.e. reaching the poverty threshold) and thus, the equality principle begins to get distorted.

Every tax in the Greek legal order has two constitutional foundations, the Article 4 para 5 for substantive limits and Article 78 Gr. Const. for procedural limits. Article 4 par 5 Gr. Const. introduces a specific form of equality because it sets out the provision that only one criterion can be used for the tax burden, which is the *means* (Greek citizens contribute without exception to public charges in proportion to their means.). The whole provision has a strong economic connotation and for that reason, the term 'proportion' has the meaning of progressivity. From that point of view, the tax justice principle together with the human dignity principle, implies that the *real means* must be found and calculated for the tax burden.

It is accepted that up until the point that someone covers their personal-basic needs, according to the human dignity principle, no tax duty applies, because of the prioritization established by Article 2 para 1 Gr. Const. that provides the human dignity principle. For that reason, the lowest tax scale must introduce a tax exemption, as the combined interpretation of Art. 2 para 1 and 4 para 5 Gr. Const. suggests⁴². Given that there is no human being free from their vital needs, up until this point of covering basic needs, every citizen must be included in that tax exemption. So, there is no doubt that large families should, *as everyone else*, be included in this tax exemption, which must take their real needs into consideration. In other words, tax exemption serves the purpose of defining the real means of each citizen, their real tax capacity. In the case of large families, of course, this tax exemption is also supported by article 21 Gr.Const., but it does not exhaust the obligation of protection, because the constitutional provision of Article 21 Gr. Const. serves another purpose and not that of establishing the real tax capacity and tax justice.

C. The generalization of statistics and the in concreto judicial control of constitutionality

Poverty is a scientific object for applied socio-economic sciences⁴³, i.e. the sciences that apply quantitative methods of measurement⁴⁴. Statistics are divided into descriptive

⁴¹ See, for the liquidation brought by the neo-liberalism, S. MOYN, NOT ENOUGH. HUMAN RIGHTS IN AN UNEQUAL WORLD 71 (2018).

⁴² D. Karagiorgas, Dimosia Oikonomiki (Public Finance) II, The financial institutions 273(1981).

⁴³ Or. Lelkes, K. Gasior, *Income Poverty in the EU: What Do We Actually Measure? Empirical Evidence on Choices, Underlying Assumptions and Implications* (Based on EU-SILC 2005–2014), in REDUCING INEQUALITIES. A CHALLENGE FOR THE EUROPEAN UNION? 75 (Renato Miguel Carmo, Cédric Rio, Márton Medgyesi (eds.), 2018).

⁴⁴ According to the definition given in statistics is the branch of applied sciences that has as its object the collection, presentation, study and analysis of observations or measurements that refer to a

statistics, inductive statistics and statistical analysis⁴⁵. The problem of generalization usually concerns inductive statistics and, therefore, the quality of the samples.

However, the question of generalization also arises in stages that precede the results or the conducting of the research itself and refers to the so-called quantification (of concepts)⁴⁶. Quantification requires criteria that can be measurable. These criteria lean toward generalization in the sense that they start from the specific in order to describe and finally, quantify the concepts. For example, the criterion for possession of or the capability of owning a car⁴⁷ starts from the specific "X (person) owns or does not own a car" and then standardizes X as poor or "non-poor" depending on the answer. So, the proposition has the meaning that whoever owns or is capable of owning a car is not poor and whoever does not own or is not capable of owning one is poor.

In law, deductive reasoning prevails⁴⁸. Thus, it could be accepted, *in abstracto*, that a poor person is one who is unable to buy or own goods and / or services to meet their needs. Let us say for example that someone cannot afford to buy a car. Thus, *in concreto/specific person X* would be characterized as poor. The proposition, therefore, that anyone who can afford a car is not poor would be merely a generalization of a specific case. Furthermore, as Supiot analyzes, the legal characterization according to the rule of law works differently compared with the characterization according to the "rule" of statistics. It is the judge who will decide whether the facts fall within the meaning of the rule of law which they are called upon to apply⁴⁹. Even in the case of a decision issued by a Supreme Court, its judgment is mediated by an accessible language, which means that the interpretation remains open in perpetuity⁵⁰. Indeed, according to the definition that the Greek Statistical Authority adopts, a poor person is someone who lives below "60% of the median equivalent of total household disposable income, based on the modified OECD equivalence scale"⁵¹. Therefore, practically speaking, it is virtually impossible for anyone else to know who is poor and who is not.

Bridging the gap between the inductive reasoning of statistics and the deductive reasoning in law becomes more difficult when quantification concerns a constitutional term, that of decent living, regardless of any further categorizations between descriptive or inductive statistics. Even if the whole population were to be used for the measurement, the problem

specific object or event, D. Karageorgos, *Statistiki, Perigrafiki kai Epagogiki [Statistics, Descriptive and Inductive]*, 20 (2010) (in Greek).

⁴⁵ G. Yfantopoulos, K. Nikolaidou, *H statistiki stin koinivniki erevna [Statistics in social research]*, 65 (2008) (in Greek).

⁴⁶ Sartori *Supra* note 26, at 1040.

⁴⁷ This criterion is used to apply the material deprivation index proposed by Townsend, see P. Townsend, *International Analysis Poverty*, Routledge, 1993.

⁴⁸ Phoebe C. Ellsworth, "Legal Reasoning" in *THE CAMBRIDGE HANDBOOK OF THINKING AND REASONING* 686, 685-704 (K. J. Holyoak and R. G. Morrison Jr., eds., 2005).

⁴⁹ See in detail the example on the work accident, A. Supiot, *supra* note 40, at 91.

⁵⁰ Supiot, *supra* note 41, at 92 *et seq.*

⁵¹ See the methodology of the measurement in the Poverty Risk, Income and Living Conditions Survey for the year of 2018, 15.

of generalization remains because the detailed examination of an individual case may bring different results in relation to its standardization based on specific criteria that have been pre-selected⁵².

Effective judicial protection with the support of statistics is the most crucial problem, given that the specific characterization in the inductive reasoning of statistics takes place before the detailed examination of the individual and very specific case⁵³. Standardization with specific criteria leads to normalization⁵⁴, which can potentially limit the scope and quality of protection provided by the rule of law principle⁵⁵, according to which the rules of law must be general and abstract so that they can apply in every case on equal terms.

The problem of movement between the levels of abstraction is observed in particular during the judicial protection of decent living and reflects the attempt of the judge to share the areas of protection between themselves and the legislator. In a case concerning the compulsory confiscation of salaries, pensions and insurance benefits resulting from debts, the Court stated that the protection of $\frac{3}{4}$ of the amount of salary under the law, *in general and regardless of the circumstances of each specific case*, does not violate the principle of human dignity, but rather, with regard to confiscation, this provision is in conformity with the human dignity principle⁵⁶.

This assessment is, in principle, correct. The legislator is obliged to take general and abstract measures to protect decent living⁵⁷. However, the Court is obliged to apply these measures *in concreto* on a case-by-case basis and review their constitutionality taking the particular circumstances into consideration. The assessment of personal conditions may lead to the violation of the Constitution, if a legal provision, which is in accordance with the

⁵² For the problems of the inductive method in the application of statistics to social issues, see Supiot, *supra* note 41, at 89. On the issue of generalizability, Em. V. Towfigh, Empirical arguments in public law doctrine: Should empirical legal studies make a “doctrinal turn”?, *ICON* (2014), Vol. 12 No. 3, 670–691, 680.

⁵³ Supiot, *supra* note 41, at 91.

⁵⁴ A. Supiot, *supra* note 41, at 89. L. R. Peck, *Stereotypes and Statistics: An Essay on Public Opinion and Poverty Measurement*, *Journal of Poverty*, 11:3, 15-28. (2007)

⁵⁵ See, e.g., ‘This limit ensures the tax-free of the main residence of the taxpayers, since, statistically, the value of the main residence of the average Greek citizen does not exceed this limit’, Greek Council of State Decision [GC] Decision n° 532/2015.

⁵⁶ Greek Council of State Decision n° 359/2018.

⁵⁷ See also, Greek Council of State Decision [GC] n° 3177/2014 ‘The fact that some of the applicants, [...], are in a difficult financial situation, due to the high mortgage and consumer loans they had received in the past, or due to their increased overall finances does not make the disputed regulations unconstitutional, because the legislator cannot make an individual judgment on the application or non-application of law, nor is he obliged to provide for the discretion of the Management to judge in each specific case whether a balance is ensured between the requirements of general interest and the need to protect the property rights of each employee’.

constitutional rules and principles *in abstracto*, is applied. Thus, there has only been one case when the measure of confiscation of $\frac{1}{4}$ of the amount of the pension that was imposed on an elderly lady (eighty years old) with serious health problems was considered a violation of the human dignity principle under Article 2 para 1 Gr. Const.⁵⁸. In every other case, the Courts emphasized the legal provision that was seen as protecting human dignity *in abstracto*. The underlying reason can be found in the statistical data of the poverty threshold and the observation that after the deduction of $\frac{1}{4}$ of the amount, the amount remains above the poverty line.

II. Protecting decent living through the poverty statistics ... A possibility?

A. The gap between income poverty and the cost of living

There are multiple ways to measure poverty⁵⁹. Income poverty prevails because it facilitates both the calculations, given that the variable is already quantitative, and the comparisons between different places, systems, cultures etc. Quantitative variables are distinguished between spatial and proportional. The difference between them refers to the equivalence between the intervals of values of the variable at every equal distance⁶⁰. The example usually given for spatial variables is the Richter scale, where the values 4 to 5 and 5 to 6 are not equivalent, even though the values of the variable have an equal numerical difference⁶¹. *In contrast, in proportional variables such equivalence is considered to exist.*

Income is treated as a proportional variable, which can be further categorized, i.e. it can be converted into a qualitative variable⁶². Thus, it should be emphasized that the concept of qualitative variable refers to the means of measurement and not to the quality of the characteristics of a category or an element.

In addition, the quantitative-proportional variable of income should not be confused with the (legal) concept of proportional equality, namely that of Article 4 para 5 Gr. Const. Taking income as a scale of measurement, it can be considered that each value, for example each 1 euro, is equivalent to the previous one, and for that reason, has an equal standard numerical difference. However, for those who own it, its value changes due to the declining marginal utility of income⁶³. In fact, the proportional variable refers to values that have an equal *formal-numerical* difference between them and, consequently, when the variable of income

⁵⁸ Administrative Court of Athens Decision n° 1716/2010.

⁵⁹ I. Petrillo, *Computation of Equivalent Incomes and Social Welfare for EU and Non-EU Countries*, CESifo Economic Studies 400, 396–425 (2018).

⁶⁰ Yfantopoulos, Nikolaidou, *supra* note 47, at 97.

⁶¹ *Id.*, at 99.

⁶² *Id.*, at 99.

⁶³ Karagiorgas, *supra* note 43, at 273.

is used as a criterion for classification and categorization, these values are taken as having a formal-numerical relationship with each other. The result is that the nature of income as a medium of exchange weakens, its exchange value or purchasing power not being taken into account⁶⁴.

According to the poverty measurement methodology as applied by the Greek Statistical Authority, relative poverty is calculated (poor compared to others) and is set at 60% of the median equivalent of total disposable income in a household, based on the modified OECD equivalence scale, and differentiated from the concept of the risk of absolute poverty (those who lack the basic means of subsistence). The main indicator of poverty in the EU is the poverty line, defining poverty in relative terms and, in particular, in terms of those who have an income level below a certain threshold in relation to the average or median income of the country in which they live⁶⁵. This part of the population is considered being at risk of poverty and may not be able to enjoy a standard of living compared to others in the same country⁶⁶. Comparing between the countries, the standard of living can vary⁶⁷ and also, can vary the population that may be close to the poverty line⁶⁸. It is also pointed out that relative poverty is defined in terms of liquidity and, consequently, it does not measure benefits in kind or social services nor consider inflation and its value. Thus, a tax change, for example, cannot affect the outcome⁶⁹. Conversely, a change in the income of others may result in someone being categorized as poor one year and not the next, even though their income has remained stable⁷⁰.

As Supiot points out, income offers a "common" denominator to apply the equation, but its relationship with equality has not been established⁷¹. Nevertheless, income originates as a concept from the economic sciences and is perceived as a means of exchange or purchase or consumption. However, in the measurements of income poverty, income loses its character as a means of exchange, as the different amounts occurring do not address the question as to whether they can actually ensure decent living, because whether above or below the poverty line, the cost is not taken into account, i.e. product prices and other factors that affect its value⁷².

In law, income cannot be considered as a formal-numerical variable. Income falls within the meaning of the term "means" of Article 4 par. 5 Gr. Const. where the substantive equality that establishes this provision combined with the economic significance of the term implies the obligation of tax progressivity. Furthermore, in other systems, beyond tax systems, like basic income system of social welfare, income maintains its substantive character which means that among the state's obligations is to take into account the real value of income, as

⁶⁴ Supiot, *supra* note 41, at 92.

⁶⁵ Lelkes, Gasior, *supra* note 45, at 77.

⁶⁶ *Id.*, at 77.

⁶⁷ *Id.*, at 77.

⁶⁸ *Id.*, at 81.

⁶⁹ *Id.*, at 77.

⁷⁰ *Id.*, at 84.

⁷¹ Supiot, *supra* note 41, at 83.

⁷² Lelkes, Gasior, *supra* note 45, at 77 *et seq.*

emerging from one's personal situation and from the cost of living, the level of prices, services, etc. From that point of view, the major concern is not for an absolute number to remain untouched (100, 1000, 5000), and that as demonstrated in ECtHR case-law, the specific amount of an income (pension, salary, benefit) is not protected⁷³. In terms of decent living, what matters is the substance, that is to say, the value of income in relation to the cost of living and the personal needs of each person. That means that statistics on poverty cannot be used in the field of decent living protection, unless they take into consideration more substantive aspects of decent living⁷⁴.

B. Income inequality as additional data for judicial assessment

Apart from the statistics on poverty, there are also statistics on inequality. The most common indicators are the Gini index and the S80 / S20 percentage. The Gini index refers to income inequality by measuring the degree of its dispersion⁷⁵. Dispersion measures allow data to be observed as they frame measures of trends⁷⁶. Among these measures, range is what allows us to establish the distance from the lowest to the highest value of a variable⁷⁷. When the survey is sampled then the income range will not show the actual distance between the two ends of the income scale in a population⁷⁸. So instead of a range and price deviation, the Gini index is usually used.

According to the Greek Statistical Authority's survey on economic inequality for 2018 (21.6.2019), the share of income in quarters is distributed as follows: the highest annual personal income for the 1st quarter amounts to 5,373 euros, for the 2nd quarter to 7,863 euros, and for the 3rd quarter to 11,200 euros. The 4th quarter, i.e. ¼ of the population, includes the highest incomes, which corresponds to 45.9% of the total national disposable income⁷⁹. This means that 75% of the population in Greece has an annual income of up to 11,200 euros. Although the highest income in the 4th quarter is not given, the fact that the clear majority of the population is concentrated at such a low level with differences of two or three thousand euros between them from the first to the second and the third scale allows to conclude that a situation of critical income inequality exists in the country. This fact is more significant than the poverty line set for the year 2018 at the amount of 4,718 euros (equivalent income), since the difference between the first three scales is quite small, while the fourth quarter includes extremely high incomes, which remain unknown. Given that the vast majority of the population is below around €11,000, the characterization of poverty is not an important fact for the law, because what these facts suggest is that, in principle, everyone should be protected and, exceptionally, only those with extremely high incomes

⁷³ See for example ECtHR *Bélané Nagy v. Hungary*, n° 53080/13, decision of 13.12.2016, para. 84.

⁷⁴ For almost the same problems in PPP Statistics, A. Freeman, *The Poverty of Statistics and the Statistics of Poverty*, *Third World Quarterly*, Vol. 30, No. 8 (2009), pp. 1427-1447, 1428-1430.

⁷⁵ Yfantopoulos, Nikolaidou, *supra* 47, at 312.

⁷⁶ *Id.*, at 280.

⁷⁷ *Id.*, at 281.

⁷⁸ *Id.*, at 281.

⁷⁹ Press release on the Economic Inequality of HellStat for the year 2018, 3.

can be excluded from the protection of decent living on the grounds of the combined interpretation of Article 4 para 5 and the new provision of Article 21 Gr. Const.

In this context of critical inequality within society, not only is the definition of "poor" but also the definition of "non-poor" of particular significance. The "non-poor", in this binary system of poor - non-poor, is actually divided into more than one quarter, where part of the 4th quarter includes conditions of luxury living. The "scale" of poverty presupposes extreme conditions. Indeed, mathematically speaking, there is no median without (two) outliers, whereby if one is defined as "poverty" the other should be defined as "luxury living" in order to maintain the necessary (democratic) balances.

German case law has protected the school bag or the cost of the school trip in the framework of the social welfare system⁸⁰. Only what can be considered as part of the concept of luxury living is excluded from this social protection framework⁸¹. Hence, in principle, almost everything (excluding 'luxury living') is protected. In other words, there is the need to reverse the aim, which is not to find the poor and protect them, but to find who must not be protected under the umbrella of decent living interpreted together with the rule of progressivity of Art. 4 par. 5 Gr. Const. The data provided by the Greek Statistical Authority should serve in the field of law for the inference of presumptions of luxury living, in order to include more persons in the scope of protection and to reduce the general insecurity of law because of the vagueness of the term 'poor'⁸².

C. The quantification of decent living as a constitutional obligation following the amendment

Any statistical research is preceded by its methodology, aims and research hypothesis. The theoretical framework is set in the research hypothesis. The purposes of the research are what the study intends to "measure", and finally, its methodology gives, among other things, the definitions of the research and the way in which the data will be collected and processed.⁸³ The parameters of the research are related to its variables and refer to the quantification⁸⁴.

As Sartori observes, when someone refers to the 'methodology' of the statistical survey, they actually refer to measurement techniques. There is no methodology without reason, without "thought for thought". The technique in this sense does not replace the methodology⁸⁵. Sartori also describes 'quantitative measures' as a linguistic idiom, a point

⁸⁰ Gruner, *supra* note 12, at 202-213.

⁸¹ Gruner, *supra* note 12, at 202-213.

⁸² M. Qizilbash, *Philosophical Accounts of Vagueness, Fuzzy Poverty Measures and Multidimensionality*, FUZZY SET APPROACH TO MULTIDIMENSIONAL POVERTY MEASUREMENT, 9 in Achille Lemmi and Gianni Betti eds, 2006.

⁸³ Yfantopoulos, Nikolaidou, *supra* note 47, at 59.

⁸⁴ *Id.*, at 71.

⁸⁵ Sartori, *supra* note 20, at 1034, 1033-1053

that also be made by Supiot as mentioned above. As Sartori points out, we can agree that by the term 'variables' we mean the concepts, but this does not mean that every concept can be quantified. Therefore, while each variable is a concept, not every concept can be a quantitative variable⁸⁶, as exactly Sayer stresses out as mentioned above.

From this point of view, 'conceptualization precedes quantification'⁸⁷. This means according to its argument that not only does quantification begin when the concept has been formed, but also that *the object of measurement, the indices, cannot be determined by the quantification itself*. The rules that determine the formation of a concept do not come from or are determined by the rules of quantities and quantitative relations⁸⁸. The definition of the concept that is quantified comprises the place that law -given that decent living is a legal term - intervenes in the statistics. In other words, when the definition is not in accordance with the constitutional text, the conclusions of any statistical survey adopted by the legislator can be challenged. Even in cases where the legislator sets the definition, which is not the case in Greek reality, the court can review its adherence to the Constitution. Consequently, the fact that there are many "definitions" of poverty⁸⁹ -that actually are not definitions but ways of measurement- and thus there is no 'right' or 'wrong' way of measuring poverty⁹⁰, should not lead us to the conclusion that the judge may not exercise judicial control upon the definition of a constitutional-legal term which is quantified and its indices for its conformity with the Constitution. Furthermore, it must be underlined that when the object of protection is decent living, decent living is the term that must be quantified. Statistics of poverty are, in principle, inadequate regarding constitutional obligations, because they quantify another concept, that is poverty.

Entering in the field of law, what can be measured and what must be taken into account is formed through constitutional provisions, rules and principles that comprise the entire system of the rule of law and the welfare state (article 25 Gr. Const.). As Trute points out, quantifying a concept is a matter of constructs that depend on the researcher's standpoint and thus may differ⁹¹. On the one hand, there may be scientific independence from political processes and, on the other, the demand for transparency, but the major issue is that the notions are not only part of the relationship between science and society but involve both politics and the law⁹². Policy-makers can rely on science and thus, determine their decisions, but once these decisions are transposed into law, law begins to be involved⁹³.

Although statistics may often apply legal terms for their measurements, on most occasions the framework is already predetermined by the law such as in criminology, whereby those

⁸⁶ *Id.*, at 1039.

⁸⁷ *Id.*, at 1040.

⁸⁸ *Id.*, at 1039.

⁸⁹ N. Petersen, *Avoiding the common-wisdom fallacy: The role of social sciences in constitutional adjudication*, *ICON* 316, 294–318 (2013).

⁹⁰ *Id.*, 316

⁹¹ H. Trute, *Comment from a Legal Perspective, in THE PUBLIC NATURE OF SCIENCE UNDER ASSAULT* 57 (2005).

⁹² *Id.*, at 57, *et seq.*

⁹³ *Id.*, at 59, *et seq.*

categorized as juvenile offenders and those as adult offenders can be found in the criminal code beyond the reach of statistics. In fact, perhaps the decent living protection framework is the only legal framework that has been left totally (unregulated) to the discretion of the quantitative methods⁹⁴. This is a huge gap from the point of view of constitutional protection of decent living, and we already face the deterioration of living conditions due to the practices in law makers who exploit this gap. The fixing in law of the amount of 384 euros for national pensions because statistics on poverty found the poverty threshold to be at 384 euros, *-according, that is, to the statistical methodology, being equivalent income and not real money-*, is entirely absurd, given that only the average rent for an apartment exceeds 370 euros, excluding all utility bills –and, of course, food-. In this context, the court is obliged to exercise control of constitutionality upon the obligation of the state to safeguard *decent living conditions* according to new Article 21 Gr. Const. That means that the court can control the way that the amount is calculated when it is apparent that it is not based on the quantification of decent living and can indicate the criteria of measurement by interpreting the constitutional text. And this, thanks to the new constitutional provision which refers expressis verbis to the protection of *decent living*, thus, transforming the notion of decent living to legal term of constitutional level. So, it must be noted that the engagement of the Court to quantitative methodology for the measurement of decent living should not anymore considered as a technique to exercise judicial control upon socioeconomic rights⁹⁵, but constitutional obligation.

A new wave of statistics on poverty considers poverty to be multidimensional⁹⁶. According to this approach, living conditions correspond to the ability of individuals, households and communities to meet basic needs in the following dimensions: income, education, health, nutrition, water, work, housing, access to production, access to the market, social participation⁹⁷. This is a very important step towards a closer interaction with the constitutional context. However, it must not be forgotten that decent living is also strongly related with the cost of living, given that different amounts such as pensions, salaries, tax exemptions depend on this right.

Concluding remarks: Environmental protection as inspiration

We have already stated that statistics on poverty do not cohere with the decent living protection framework. At the same time, quantitative methods could be very supportive regarding the protection of decent living. This means that the most important question is not if we need statistics, but what kind of statistics we need for constitutional protection.

⁹⁴ See, for the lack of a concrete notion of human dignity material prerequisites, N. Rao, J. Min, Decent Living Standards: Material Prerequisites for Human Wellbeing, Soc Indic Res (2018) 138:225–244, 226.

⁹⁵ L. Williams, The role of courts in the quantitative implementation of social and economic rights: A comparative study, (2010) 3 Constitutional Court Review, pp. 141-199, 181.

⁹⁶ L. ASSELIN, ECONOMIC STUDIES IN INEQUALITY, SOCIAL EXCLUSION AND WELL-BEING, THEORY AND CASE STUDIES 3 (2009).

⁹⁷ Id., at 3; S. R. CHAKRAVARTY, INEQUALITY, POLARIZATION AND POVERTY, ADVANCES IN DISTRIBUTIONAL ANALYSIS 143 (2009).

The Plenary of the Greek Council of State in the same landmark decision had requested as a legislative obligation a scientific study accessible by the judge⁹⁸. Following this request, in a later decision, which ultimately did not prevail in the Plenary Session, the Court demanded the conducting of a previous scientific study to assess the implications of these measures of living standards⁹⁹. It was the first time that an "environmental" approach was adopted in order to safeguard the protection of decent living of all citizens.

In particular, the court ruled that the legislator should have considered the existence of alternatives and compared the advantages and disadvantages of each (austerity) measure that it adopts. The legislator should have examined, before the adoption of the measures, if the effects on the living standards, combined with the effects of other measures already taken and combined with the cost of goods and services, unemployment rates, and other factors, lead to an impermissible reduction in the standard of living under Article 2 para 1 of the Constitution¹⁰⁰. This emerging form of judicial control, though still at an early stage, has profound potential.

The study of the socio-economic impact of the measures, in proportion to the environmental impact study on environmental protection, which the court implied objectifies the protection of decent living conditions when the judicial control is exercised in abstracto, contrary to intersubjective comparison¹⁰¹ under the influence of poverty statistics and renews the concept of "wider socio-economic conditions". Through this perception, wider / general conditions do not play a justifying role of continuous adaptation to them¹⁰², but

⁹⁸ Greek Council of State [GC] Decision 2287/2015. Also, Administrative Court of Thessaloniki Decision 3037/2018. Contra Greek Council of State [GC] Decision 734/2016. The justification of the necessity of the measures as an obligation of the legislator, appeared in a dissenting opinion already Greek Council of State [GC] Decision, para. 33.

⁹⁹ See, a decision upon environmental protection, "The deterioration of the land use regime is constitutionally tolerated only in exceptional cases and if there are, for the above reasons, special reasons of public interest, the assistance of which must be substantiated by a special scientific study based on the findings of the spatial sciences and of urban planning, and always within the framework drawn by the overhead spatial and urban planning», Council of State Decision n° 936/2017.

¹⁰⁰ Council of State Decision n° 2626/2018. Contra Council of State Decision [GC] Decision n° 1307/2019.

¹⁰¹ See, e.g., an intersubjective comparison [the pension or the salary] 'is not determined on the basis of the previous remuneration of each specific category of civil servants or employees, but on the basis of the general prevailing conditions and in relation to the standard of living of other civil servants and employees, as well as the population of the country in general', Council of State Decision [GC] Decision n° 4741/2014, dissenting opinion, 1316/2019.

¹⁰² See, e.g., Greed Court of Audit [GC] Decision n° 1388/2018: 'Furthermore, taking into account the prevailing socio-economic conditions, there is no question of losing the basic means of livelihood and endangering the dignified living of those affected by these cuts, as these do not apply to the pensions themselves, but to some extra benefits'.

function as criterion for the evaluation of necessity and *stricto sensu* proportionality of the adopted austerity measures.

The ecological perspective of society and the utilization of judicial tools for the protection of the environment provides a new prospect and certainly seems to provide greater guarantees of safety and protection, because it distinguishes the fiscal problem from the major social problem caused by the adoption of measures with aggravating socio-economic impact. It would, therefore, seem that society has a load-bearing capacity to absorb vibrations for economic reasons without disrupting not only social peace and social cohesion, but also its socio-economic liberal character. The study of socio-economic impact seems to indicate a completely different type of "measurement".

The tools of judicial environmental protection from this perspective can open the way to control even the most intractable cases of social rights and tackle not only income-based issues, but also extend to issues regarding the efficiency of public structures and services. In proportion to the extended legal interest of environmental judicial protection¹⁰³, cases where there is a legal interest of localized proximity can be considered, i.e. where everyone concentrates their vital interest¹⁰⁴. Moreover, the closing of schools, hospitals and other social structures is an object that can and should be accompanied by a study of socio-economic assessment, as it does in studies on budgetary impact¹⁰⁵ and as a form of compensation. Under this perspective, the decent living protection could reach the best possible outcomes covering the whole scope of implementation and safeguarding the quality of protection both in an abstract and individual level.

¹⁰³ For an extensive analysis, see V. Boukouvala, *O dikastikos elegxos tis sintagmatikotitas ton nomon se periballontikes diafores apo ta dioikitika dikastiria [The judicial review of the constitutionality of laws in environmental disputes in administrative courts]*, 179 (2020) (in Greek).

¹⁰⁴ See, e.g., as for environmental protection, Greek Council of State [GC] Decision no 2347/2017.

¹⁰⁵ For the financial impact assessment of the regulation, see Law 622/2019 (57)(1)iv) and (62(1) and also: https://gslegal.gov.gr/?page_id=45.