Chapter 9: The legal regime of banking sector executives' employment relationships

Introduction

Legal science treats the employment relationship (*contract of employment in a position of subordination*) as a special *agreement of a personal nature*, in which one contracting party, the worker, is protected by law because his negotiating and contractual position is weak. This treatment lends an ***anthropocentric character*** to labour law and is transmuted into two basic principles, ***favour to the worker*** and ***protection of his character*** as fundamental rules of the legal system.

In general ***work*** is an ***intangible good*** which is offered by the worker to the employer in exchange for an agreed compensation. It constitutes the content of their job tasks as "provision of services" in conditions of *subordination*[1]. The contract of employment differs from other contractual forms of provision of services, with regard to the contractual bond of subordination, which is missing from them. This is true in the case of companies, contracts for services and orders[2], which are regulated by different rules of law.

In the framework of labour law ***the content of job tasks*** is a criterion for separating employed people into ***workers*** and ***employees*** [3] This distinction leads to an appropriate differentiation of the respective rights of working people and employers.

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[1] For a brief overview of the positions of theory and case law, see ***I. Koukiadi,s*** *Labour Law. Individual Employment Relationships*ς 1995 pp. 201-209 . For contemporary trends in setting the limits for implementation of Labour Law on the basis of the concept of the employment relationship of subordination, ***Reports to the 6TH European Congress for Labour law and Social Securities,*** Warsaw 13-17 September 1999; ***Alain Supio,*** Wage employment and self-employment; ***Paul Davies,*** Wage Employment and Self Employment –a Common Law Perspective, pp. 129-184. The authors note the decline of the stereotyped criteria for the concept of subordination and the legal distinction between workers and employees, as well as the variety of forms of provision of services and atypical forms of employment; ***H. Angelopoulos,*** *The Contract of Employment in a Position of Subordination and Criteria for Subordination* (Review of Labour Law (RLL), 2001, p. 337 et seq. and 3886 et seq.), for a presentation of the positions of Greek case law on the concepts of legal and personal subordination, the criteria characterising them and a combination of them for dealing with special cases of employment which are influenced by contemporary socio-economic developments.

[2] ***I. Koukiadis*** (1995), pp. 232-238

[3] ***I. Koukiadis*** 1995, pp. 258-263, for the distinction between workers and employees.

Managerial staff are a special category of employees[4]. For them, *labour law offers only limited protection* compared to other employees. The reason for this treatment is the decisive part they play in creating and implementing company policy, which reinforces their bargaining position vis-à-vis the employer. ***Managerial staff are excluded from the legislation regarding working time limits*** and regulate their labour rights adequately through their individual contracts of employment. In this case international and national law and order fail to provide strong legal protection; in effect, they depend on the operation of the right to enter into contracts for regulation of working time and related rights.

Contemporary corporate organisation *blunts the hierarchical pyramid of job tasks* and ***individualises the responsibility*** of workers who have become ***executives in the company***. Executives take part in the planning and implementation of corporate policy with a specific field of responsibility. Often *their pay is linked to the financial results of their duties and separated from working time*. The flexibilisation of working time leads to non-payment of extra compensation in cases where working time limits are exceeded, or for work performed on holidays, Sundays or at night; it may also mean that annual holidays are not granted: this is "offset"[5] through granting more

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[4] ***Basic bibliography on the legal regime of employment of managerial staff*** : ***T. Mitsou,*** *The Differentiation of Working People into Categories,* RLL, 1967, p. 346; ***D. Sipnelis,*** *Managerial Staff, RLL* 1972, p. 19; ***D. Kalomiris,*** *Concept of Managerial Staff and their Right to Leave,* RLL 1974, p. 1294; ***D. Travlos – Tzanetatos,*** *Termination of the Employment Contracts of Managerial Staff for Good Reason,* RLL 1987, p. 411 et seq.; ***C. Petini – Pinioti,*** *Managerial Staff – Strike,* Bulletin of Labour Legislation (BLL) 1993, p. 287; ***A. Karakatsanis, S. Gardika,s*** *Individual Labour Law,* especially p. 52 et seq. and 79 et seq.; ***G. Leventis, H. Goudou,*** *Labour Legislation,* 1988, pp. 40 – 43; ***K. Konidiotou,*** *Managerial Staff,* RLL 1989 p. 48; ***A. Ananiadi,*** *Consideration of the Concept and the Legal Treatment of Managerial Staff Working in Contemporary Enterprises,* I. Deligiannis Law, 1992; ***K. Papadimitriou,*** *Managerial Staff in Labour Law.* (BLL 1994), p. 1137 et seq.; ***I Koukiadis*** (1995), p. 263-266, including a commentary on the criteria and the basic findings of case law; ***A. Kazakos,*** *A Managerial Employee with Competencies of a Managing Director in a Limited Banking Company,* RLL 1998, p. 97-110; ***idem.,*** *Trade Unionism among the Police Staff of the Greek Police Force. Membership of Officers in Police Employee Associations*. (BLL 1997), p. 164 et seq.; ***A. Metzitakos*** *Managerial Staff and Persons in Positions of Confidentiality,* RLL 1996, p. 527 et seq.; ***Idem.,*** *Termination of a Managerial Employee's Contract for Good Reason,* RLL 1998, p. 769 et seq., p. 1 et seq.; ***L. Dassios,*** *Procedural Labour Law,* A/I 1999, p. 268.

[5] Compensating for extra time worked with other benefits does not fulfil a worker's right to extra pay when working time is exceeded. In practice, "executives" do not take legal action, nor do they bring complants to the Labour Inspectorate when working hours are violated. However this practice does not mean that there are no grounds for legal claims. Rules of public order apply to the organisation of and compensation for working time, and they prohibit even the offsetting of one day's working hours with time worked on previous or subsequent days (For a summary, see ***I. Koukiadi,*** Labour Law – Individual Employment Relationships,

financial and other benefits, as well as the prestige involved in the job and the job title.

Executives enjoy an ambiance of high prestige in their work environment and the social environment as a whole. The way they perform their job tasks is often accompanied by functional deregulation of working hours, due to their participation in meetings, study of various issues outside of working hours, public relations for promoting company business, attendance at training programmes and scientific and technical briefings, etc. Executives' occupational prestige stems mainly from the following:

α) creativity and initiative in the performance of their job tasks

β) the high level of emoluments, which fluctuates according to financial results and job tasks

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1995, p. 371 et seq.), unless the procedure for working time arrangements has been followed; (***M. Dotsika,*** Working Time Arrangements, RLL, 2001). Working time arrangements were laid down in Greek legislation through three successive regulations, each replacing the one immediately preceding it.

- *Law 1892/1990, Article 41*
  The arrangement referred to *a period of up to three months* and allowed working hours to be increased *up to 9 hours per day* and up to 48 hours per week, with a reduction of working hours in the following period and an average working time of *40 hours per week for six months*. Pay was set as being steadily proportionate to 40 hours of work per week and 8 hours per day.
- ***Law 2639/1998, Article 3*** provided for two types of arrangements:
  α) Arrangements for a *period of up to three months* with an increase in working hours by *one hour in excess of contractual working hours*, a maximum *working day of 9 hours* and a working week of up to 48 hours, with a reduction in working hours in the following period as well as an average working time of *40 hours per week for six months.*
  b) Arrangements for a *period of up to six months* with an increase in working hours by *two hours in excess of contractual working hours,* a maximum *working day of 10 hours and a working week of 48 hours*, a reduction in working hours during the following period, and an average working time of *40 hours per week for 12 months.* Pay would be proportionate to 40 hours a week, with a working day of 8 hours, and a fixed daily emolument although working hours may fluctuate.
- ***Law 2874/2000, Article 5*** whereby the arrangements are expanded organisationally and new basic rules are introduced as follows:

  a) *Arrangements may regard any period of time, which may even be a whole year (reference period). b) No maximum daily working time is set* but only an average maximum weekly working time which is *38 hours within the reference period γ*) The total hours to be arranged are *138 hours per annum*. d). For every week of work subject to arrangements *2 additional hours of rest* are granted. e) *No provision is made for overtime exceeding maximum working hours* but only for ordinary overtime. στ) Arrangements are regulated by *collective agreementsς* or other *collective agreements of a normative nature.*

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γ) the competitive process of acquiring a job
δ) the need for constant improvement of work performance in order to keep one's job, advance one's career and rise in the hierarchy
ε) unrestricted working hours, which cause widespread confusion between working time and personal time.

These are the elements driving a general labour relations policy which strives for flexibility and increased productivity, through regulations based on the managerial prerogative and individual employment contracts. This viewpoint leads to an increase in the number of **executives in the company**

These are the elements driving a general labour relations policy which strives for flexibility and increased productivity, through regulations based on the managerial prerogative and individual employment contracts. This viewpoint leads to an increase in the number of *executives in the company, although it is not clear whether they are managerial employees or employees in highly specialised jobs or positions of responsibility.* In any case, the term "***executive***" is part of human resources management terminology; it indicates the individualisation of labour rights and the elimination of the need to be fully subject to labour law and within the scope of collective agreements and works rules. From the standpoint of labour law, however, the concept of top executive and the exclusions from the scope of labour law are quite well defined, as we will examine further on; for other executives labour law is fully implemented.

In general the increase in the number of executives is associated with restructuring of enterprises, outsourcing, subcontracting of services to self-employed people and the creation of new atypical forms of employment by making use of informatics and modern technology, all of which lead to deregulation of labour relations. These developments bring about *increased employment flexibility accompanied by a decline in strict implementation of labour law*[6].

In general the legal regime governing the employment of executives, not only managerial staff, includes issues of working time flexibility and safety at work, which have been observed in an increasing number of workers[7] and for this reason are of interest.

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[6] ***G. Spyropoulos,*** *The International Dimension of a Flexible but Socially Acceptable Employment Policy,* RLL 1998, p. 385 et seq.

[7] ***A. Dassios,*** *Labour and Procedural Law*, AI 1999, pp. 267-271; ***H. Goutou, G. Leventis,*** *Labour Legislation,* 1988, especially p. 43, where there is a short observation on how employers violate labour legislation by characterising as many employees as possible as top

We will now examine the characteristics of top executives' contracts of employment and their effects from the point of view of labour law. Finally we will outline the employment relationships of managerial staff (executives) in the Greek banking sector.

The purpose of this study is to highlight the problems of defining the concept of top executives in the banking sector and the legal protection of their employment relationship, so that we can evaluate the need for special legal protection for them in comparison with other executives.

1. The Basic Concept

(persons employed in positions of management or in a confidential capacity – managerial staff – top executives)

In our national legislation ***there is no definition of the legal concept of a company executive.*** The term executive is encountered in the science of human resources management and is used in the labour market to indicate the exercise of specialised, coordinating or managerial tasks. This term is used mainly in the internal relations of private-sector enterprise organisation and management. In the mid-'80s it was expanded to include enterprises in the public sector, in order to stress their modernisation and the elimination of a public-servant mentality from labour relations, i.e. bureaucratic job security and advancement in the hierarchy on the basis of length of service.

National and international rule of law use the term ***person employed in a position of management or in a confidential capacity – managerial staff,*** *which was created on the basis of the Washington International Labour Convention No. 1, (ILC 1/1919)*[8] *"limiting the hours of work in industrial undertakings to eight in the day and*

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executives; ***Jeremy Rifkin,*** *The End of Work* (1996, Nea Synora). The author sets out contemporary trends in the labour market, which also influence executives' working future, especially Chapter 4, The Price of Progress, p. 307, which discusses the decline of the middle class and also outlines the working future of workers in the services sector in the US. It is noted that 1.5 million administrators' jobs disappeared during the 1980s and unemployment spread to top executives in the '90s (*p. 371 et seq.*). This highlights the job insecurity suffered by highly paid executives in positions of responsibility whose employment relationships are individualised, based on the freedom to contract and relieved of the problems of inflexibility imposed by the rules of labour law and the operation of workers' collective rights.

[8] ILC 1/1919 was ratified by Law 2269/1920 *Article 2, para. 1:* "The provisions of this Convention shall not apply to persons holding positions of supervision or management, nor to persons employed in a confidential capacity."

forty-eight in the week". Later, Article 14, para. 1a of Presidential Decree (PD) 88/1999 *"concerning certain aspects of the organisation of working time"* lays down the right to introduce deviations from the basic provisions regarding maximum limits on working time[9] for ***top executives***. In PD 88/1999, the term *"executive"* appears for the first time in law, but without giving a conceptual definition or specifying its relationship with the term *"person employed in a position of management or in a confidential capacity"*, created by case law and legal theory. Our opinion, that *by top executives are meant persons employed in a position of management or in a confidential capacity*, is based on the regulatory content of PD 88/1999, because such workers were exempted from the relevant regulations regarding working time limits laid down in the pre-existing legislation.

ILC 1/1919 gives indirectly the definition of managerial staff on the basis of three criteria, which are set out separately and regard the administrative character of the job tasks as a position of ***supervision*** or ***management*** or ***confidentiality[10].*** The regulations regarding limits on daily and weekly working time are not applied to employees placed in such positions. However, with regard to the application of other rules of labour law, such as trade union rights, protection of jobs from dismissal, career advancement, etc., the aforementioned concept is differentiated depending on the purpose of the law protecting the specific labour rights.

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[9] ***P.D. 88/1999, Article 14:*** "1. Subject to compliance with the general principles relating to the protection of the safety and health of workers, deviations are permitted from Articles 3 (periods of daily rest), 4 (breaks), 5 (weekly rest), 6 (maximum weekly working time) and 8 (night work) for a) ***top executives*** b) employers' family members, and c) workers in churches and religious communities.

[10] ***K. Papadimitriou*** (ΔΕΝ 1994) p. 1137 et seq. presents data of comparative law and expounds on the criteria defining the concept of managerial staff, i.e. a) assignment of general management tasks, b) rate of pay, c) exercise of employer's powers, d) assumption of criminal liabilities, e) lack of control of working hours, f) development of a relation of confidentiality, g) granting of powers of representation; ***I. Koukiadis*** (1995), pp. 263-266, with a commentary on the criteria and basic inferences drawn from case law; ***A. Kazakos***, RLL 1998, pp. 97-110, especially pp. 101-103 on the concept of managerial staff, the legal and personal dependence of managerial staff on the employer and the positions of case law on the concept of management and supervision; ***Ibid.*** (BLL 197), p. 164 et seq., especially p. 169, note 9, on the position of case law in relation to the narrow concept of managerial staff and the exercise of trade union rights; ***D. Travlos – Tzanetatos,*** RLL, p. 411 et seq.), especially pp. 412-416 on the concept of the relationship of confidentiality with references to theory and case law.

The characteristics of the jobs of managerial staff overlap to a significant extent. The *position of supervision and management* is connected to the administrative organisation of the undertaking and *presupposes a relationship of confidentiality between employer and employee.* The relationship of confidentiality is so strong that the interests of employer and employee coincide due to the creative and decisive participation of the employee in the planning and achievement of the undertaking's goals. The contribution and importance of the criteria are formed in practice and constitute the justified precondition for excluding working time limits from the scope of the rules of labour law.

This situation justifies the lack of a legal rule for the concept of *managerial staff or top executives* and the problem is logically dealt with by the courts' case law, which judges the status of managerial staff and therefore implementation of working time limits on a case-by-case basis[11].

[11] Supreme Court Decision (SCD) 1123/1993, RLL 1994, p. 1079, is characteristic. It gives a special presentation and commentary on substantive criteria which characterise the concept of position of management, prompted by the case of an *agronomist technical manager* in the second most important department of a company. The criteria used to attest to his position of management, in the view of the court, are the following: a) making funds available for the Agrochemicals Department, b) representing the company with regard to technical and scientific agrochemicals issues, c) taking decisions on experiments, technical support and staffing, d) cooperating with public bodies in order to have the company's experiments included in their experimental programmes, e) representing the company in a related international company in another country, f) selecting and training employees in his sphere of competency, e) *not being subject to working hours*, f) communicating directly with company management, g) receiving a rate of pay much higher than that provided for by law and than that of the company's other employees, along with extra benefits such as allowances for meals, receptions and public relations, at his absolute discretion. As regards *working hours*, it is noted that although he follows the company's instructions with regard to time of arrival and departure from work, one clause of the contract expressly states that "…*this is applicable insofar as it is compatible with the nature of his tasks…"*

These criteria were verified by the court and *evaluated objectively on the basis of good faith and the lessons of common experience in order to diagnose the nature and type of tasks involved in the job.* They were *judged as a whole* in order to derive the concept of managerial staff.

By and large, ***a member of managerial staff is an employee in an employment relationship of subordination[12] who performs directorial and managerial tasks, is connected to the employer by a particularly strong relationship of confidentiality and whose terms of employment are regulated in the main by an individual contract of employment, which is generally subject to labour legislation and exempted from the rules regarding working time limits.***

This definition is an is an attempt to pin down the ***vague legal concept of "managerial staff"[13]***, which couples the content of job tasks with the relationship of confidentiality between the employer and the employee and signals the legal framework for regulation of the terms and conditions of employment, stressing the individual contract of employment.

2. Features of the employment relationship

Whether an employee is characterised as a member of managerial staff depends on the concomitance of basic criteria, which are assessed[14] jointly as a unified whole and which present operational particularities, when they are correlated with the job tasks of other employees and of the employer himself.

2.1. Content of duties

Considered to be members of managerial staff are employees who have exceptional qualifications and in whom the employer has particular confidence; thus the content of their tasks involves: a) the overall management of the whole company or a significant part thereof, and b) the supervision of the staff.

Through their work, managerial staff influence the developments inside the company and the company's dealings with third parties.

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[12] ***A. Dassios,*** Labour Case Law, AI 1999, p. 268; ***I. Koukiadis*** (1995) 263; ***Spinelis*** (1972), ***Karakatsanis Gardikas*** (1980), 52 et seq.; ***K. Papadimitriou*** (1994) 1237, SCD 919/1986 RLL 46, 423, SCD 1230/1988 RLL 47, 1176, Patras Court of Appeals 809/1988, RLL 47, 1178, SCD 1204/95, BLL 1997 p. 951, Thrace Three-Judge Court of Appeals 290/1995, BLL 1996 p. 77, Athens Court of Appeals 388/95, BLL 1996, p. 1309.

[13] ***A. Dassios*** *(1999),* p. 268; ***K. Papadimitriou,*** BLL 1994, p. 1137 et seq., especially in relation to the international experience of legal regulation of top executives' employment relationships.

[14] For an overall assessment of criteria, SCD 1123/1993, RLL 1994, p. 1079 is characteristic.

They are quite distinct from other employees because they exercise rights of the employer, which may include initiative in supervising corporate policy and recruitment and dismissal of staff.

The concept of position of management is not dependent on the title of the job held by the employee, but is determined on the basis of *"…the objective criteria of good faith, common experience, logic and the type of services provided, which are judged as a whole, as well as from the particular relationship of the provider to the employer and the other employees…*[15]. In any case these criteria must be clear and demonstrable, otherwise the courts do not accept vague, abstract characterisations, which merely highlight responsible tasks[16], which are the mark of an executive but not of a top executive position.

The following are the main *characteristics of the job tasks* of *managerial staff*:

* *2.1.1. Exercise of employer's duties*

Depending on the size and organisational structure of a company, staff supervision is assigned to the head of each organisational unit (*management, sub-management, sector, department, office, branch*) alongside the specialised tasks of the Personnel Manager, if this position is provided for in the organisational chart. Therefore, depending on their level in the hierarchy and their specialisation, they also perform some sort of "managerial tasks"[17], which however are not enough to make them managerial staff (*e.g. engineers or geologists supervising project execution, foremen in all types of industrial undertakings, chief editors of publications, radio and television broadcasting, etc., doctors who are heads of clinics, directors of branches or branch departments in companies running a network of individual operations, such as banks, etc.*). Executives' competencies regarding employment relations issues on the one hand are contained in the works rules, whereas those regarding management issues are contained in the rules for the organisation and operation of the company (*organisational chart, rules for planning, decision-making and decision-monitoring*).

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[15] SCD 1123/1993, RLL 1994, p. 1079.

[16] SCDs 29/98, 406/1998 and 569/1998, BLL 2000, pp. 494-495.

[17] Athens Court of Appeal Decision 388/1995, RLL 1996, p. 863 et seq. (commentary: ***S. Vlastos***) An interesting presentation of the tasks of the chief editor of a magazine, who supervises the performance of journalistic work but has no employer's tasks, since he does not supervise the operation but reports to the Manager, who does. The Manager together with the employer map out and conduct the magazine's policy.

Managerial staff not only offer guidelines to staff employed in their organisational sectors of responsibility but also effectively supervise their subordinates. Such supervision often refers to working hours, their disciplinary behaviour and evaluation, as well as regulation of their pay (granting of financial and other benefits). They also decide on staff engagements and dismissals. In practice, ***they hold "employers' positions"*** and in some cases assume penal liability for observance of the provisions which have been laid down n the employees' interest (*e.g. non-hindrance of industrial action, payment for completed work, compliance with the legislation regarding health and safety at work, working hours, etc.).* ***These tasks*** *cover supervision as a whole of workers employed in positions of subordination* and they are clearly ***increased with regard to initiative in mapping out and implementing labour relations policy.***

As concerns the performance of employers' tasks, ***managerial staff*** can be divided into a) ***administrative officers*** (financial, technical, scientific) and b) ***active employers,***[18] that is, natural persons who manage legal entities and take part in collective management bodies in accordance with company statutes, or constitute its one-person management bodies. *Active employers* are the natural expression of the legal entity and *perform both employer's and organisational tasks.* Such persons may be associated with the company in a relation of subordination. In public limited companies (S.A.s) the Managing Director, as the top management body, is responsible for performing the tasks of employer, in accordance with company statutes. He may be associated with the company in a relationship involving an order, provision of independent services or a contract of employment in a position of subordination.[19]

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[18] ***I. Koukiadis*** 1995, p. 265, SCD 846/1980, RLL 1981 p. 123, Commentary; ***I. Lixourioti,*** *Provision of Managing Director's Services,* RLL 1991, pp. 206-208, commentary on Athens Court of Appeals Decision 45583/1989 and SCD 1365/1990, RLL 1991, pp. 29 and 210.

[19] ***A. Kazakos*** (RLL 1998) p. 97 et seq., giving an overview of the job of managing director with reference to theory and case law. Also *Athens Court of Appeals 4583/1989,* RLL 1991, p. 208, *SCD 1464/1990,* RLL 1991, p. 210, *SCD 963/1999,* RLL 2000, p. 674 et seq., *Athens Court of Appeals Decision 2466/1993,* RLL 1994, p. 1083. Relative to the characterisation of managerial staff, regardless of title but on the basis of the content of their tasks: a) manager of administrative and financial services, b) staff monitoring, c) general supervision of recruitment and company finances, d) high rate of pay. The terms and conditions of such employment exceed the usual norm… in view also of the rate of pay … the approval of the general meeting of the S.A. is required, otherwise it is invalid in accordance with Article 23a of Law 2190/1920 and Articles 174 and 180 of the Civil Code. However, … *SCD 45/1997,* RLL 1998, p. 321 regarding the legal nature of the contract of a managing director in a S.A., as a

In any event, the non-absolute and unrestricted performance of an employer's tasks by an employer, as well as the non-performance of an employer's tasks, as is the case with administrative officers, does not diminish the managerial character of managerial staff, which we are examining here, provided that their administrative initiative is substantive in comparison with the other employees and the active employer.

* *2.1.2 High level in the hierarchy*

The content of the job tasks associated with a position in the hierarchy is determined by the organisational structure of the undertaking.[20] *(Organisational Chart for Services or Regulations for Corporate Decision-making and Decision-monitoring)*

Some indicative ***characteristic aspects of a high position in the hierarchy*** are the following:

* Representation of the enterprise to third parties, including public authorities.
* Assumption of contractual obligations to third parties (e.g. the right to bargain and conclude contracts involving loans, purchase and sale of goods and services, rental of real estate, project execution, etc.).
* Decisions regarding temporal planning of internal actions of the company.
* Decisions regarding the designing and means of monitoring implementation of corporate policy.
* Coordination of the services or project carried out by the company.

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relationship involving an order or provision of independent services, or an employment relationship of subordination on the basis of the content of the tasks, for which the prior approval of the general meeting of the company is required. In this case it was determined that the Board member and Managing Director had entered into a contract for a project with the company, that is, ***provision of independent services*** regarding the *project of organising the company's services both abroad and, from the point of view of business activity, in the company's offices, as well as wherever deemed necessary in Greece and abroad, paid at a rate of GRD900,000 per month beginning on 24.7.1992 and for three years thereafter.* SCD 1364/1990, BLL 1991, p. 1189: the managing director is associated with the S.A. through a ***order relationship.*** Also ***Pamboukis***, *On the Relationship of the S.A. with its Board Members.* Expert Opinion 1974 477; ***I. Rokas***, *Board Members' Pay,* No. B.35, p. 675, especially 681.

[20] *SCD 621/1995* RLL, p. 926: The employees of a large company whose tasks include overall management of the business of the undertaking, staff supervision and decisive influence in the company's business with initiative for action and a high salary are managerial staff.

* Decisions regarding recruitment, pay, career advancement and dismissal of employees.

Evaluation of the elements determining the status of managerial tasks is an actual fact[21]. Evaluation of actual cases presenting the features mentioned above ***is made in connection[22] with similar tasks carried out by other employees in the enterprise, as well as by the top administrative bodies of the enterprise, in accordance with its statutes[23]***

The findings of case law[24] present the following overall picture:
The following have been characterised as *managerial staff*:

- A head of production, training and staff supervision programmes.
- An engineer supervising construction of a factory.
- A geologist heading a worksite, representing the employer to the authorities and hiring large numbers of staff.
- A general chief foreman, who has unrestricted initiative
- The director of a sales review sector, who has broad competencies
- A main branch manager, with the right to generally represent the company.
- A manager who takes part in the decision-making of the Board of Directors.

The following *are not deemed to be managerial staff:*

- Foremen not performing general management and overall supervision.
- Directors of accounts departments.
- Directors of a department in a company.
- The sole employee of an outlet reporting to the accountant and the employer.
- A chief engineer supervising subordinate engineers and himself working in the same department.
- An expert topographer, who supervises project execution and signs payrolls.

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[21] ***A. Kazakos,*** RLL 1998, p. 97 et seq. Managerial services: *SCD 621/95* BLL 1996, p. 395.

[22] *SCD 1123/1993,* RLL 1994, p. 1079, *SCD 621/1995,* RLL 1996, p. 926, *SCD 537/1997,* RLL 1998, p. 789, regarding employees of large enterprises.

[23] e.g. ın S.A.s, in accordance with Law 2190/1920, these bodies are the Board of Directors, and the managerial staff, and if there is an employment contract they include the Board members, the Managing Director or General Manager and, as the case may be, the managers depending on the level of their tasks and the competencies assigned to them by the administrative bodies.

[24] ***A. Metzitakos*** (1998), p. 771; ***H. Goutou, G. Leventis*** (1998), pp. 41-42; ***L. Dassios*** (1999), p. 269.

- The editor-in-chief of a publication (magazine), which is an independent operation of a company, because among other things he reports to the magazine's "manager".

It is obvious that the case study for characterising employees as managerial staff prevents the creation of a clear perception of the legal characterisation of employees holding jobs such as those mentioned above.[25] The evaluation of the criteria is specialised in each specific case and depends on the overall estimation of all aspects of their job tasks and their comparison with the key management instruments "*administrative officer – active employer*" and the other employees.

A common precondition for assigning high-level tasks are a worker's ***exceptional qualifications*** (formal and real). These qualifications are determined in each case by the employer, when the job is advertised, or they are described in the company's works rules. However, workers' scientific and special knowledge in some cases disturbs companies' hierarchical structure, when in effect it is not possible for the employer or the top of the company's administrative hierarchy to monitor their job tasks, as they can the tasks of engineers or doctors. Qualitative independence when providing specialised scientific knowledge, however, is not enough to make an employee a member of managerial staff, and thus an overall estimation and correlation of all the aforementioned factors is always necessary.[26]

Finally, when a job is advertised, the existence and objective evaluation of the interested parties' qualifications are not binding on the employer when choosing managerial staff, which would guarantee the right to job access, job retention and the right to career advancement. The relationship of confidentiality allows the employer to freely weigh the importance of the qualifications in connection with other business criteria which justify the delegation of high managerial tasks.

2.1.3 Position of confidentiality

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[25] ***H. Angelopoulos***, RLL 2001, p. 337 et seq. and especially pp. 386-387 et seq., presenting the positions of case law on marginal contracts of employment of managerial staff in positions of subordination.

[26] *SCD 1204/1995* BLL 1995, 448. An employment relationship of subordination of a member of the Board of Directors of a public limited company (Société Anonyme) who had a loose relationship with the employer due both *to exceptional qualifications* and to the relationship of confidentiality . *SCD 621/1995*, RLL 1996, p. 926. A Director of the food supply departments of a big hotel company, an employee with exceptional qualifications who is on confidential terms with the employer, is assigned general corporate management tasks and has an influence on the company's decisions.

When performing their tasks, all employees function in the company's interests, that is, they have an *"obligation of trust"*[27]. Therefore both the managerial staff and the other employees serve the interests of the company.

The ***position of confidentiality of managerial staff***, however, expresses the ***corporate quality of communication and confidentiality*** between the employer and staff. In this case, the relationship of confidentiality is more profound and more crucial that the obligation of trust every worker has towards the employer. The degree to which managerial staff identify themselves with the employer's interests is not an element of a moral relationship and basic obligation to carry out their job tasks in good faith. They express the ***corporate character of the right*** of managerial staff ***to take the initiative*** and decisively influence the fortunes of the company or key sectors of its activity.[28] A managerial employee is ***the co-creator together with the employer in mapping out and implementing corporate policy*** and when performing his tasks he ***"acts in lieu of the employer"***, because his actions are guided by the employer's interest and policy.

The essence of the criterion of the position of confidentiality for managerial staff is in the main determined by the high hierarchical level of job tasks and does not reflect the personal relationship of contact between employer and employee. Therefore, employees who carry out special confidential services, or are favoured by the employer or receive his support and confidence because e.g. they keep confidential company data are not managerial staff.

Similarly, a rupture in the relationship of confidentiality between employer and managerial employee can more easily constitute an important reason for revoking responsible job tasks[29] or the grounds for terminating the contract of employment.

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[27] ***A. Dassios***, 1999, AI, pp. 245-247, with basic references to the theory and case law regarding an employee's obligation to carry out his job tasks in good faith (Civil Code 651-652 and 281-288); ***I. Koukiadis***, 1995, pp. 549-551.

[28] ***D. Travlos Tzanetakos***, RLL 1987, p. 409, especially p. 418 with an extensive reference to Greek theory and case law as well as to German theory. The author stresses: *"resulting from the position of confidentiality is a type of guiding and representative function of the employee's behaviour… and of the model which he presents to the company."*

[29] *SCD 700/1995,* RLL 1996, p. 448. The managerial prerogative for revoking responsible tasks, provided there is a contractual clause regarding such revocation, when the employee does not inspire confidence in the employer. Such revocation is not excessive and by itself does not bring about moral degradation because it leads to reduction of emoluments.

A characteristic example is the termination of the employment relationship of persons exercising management in public sector enterprises when another political party receives the majority of votes in parliamentary elections and forms a new government. In such cases special legislative regulation has provided the option of ending managerial staff's terms of office in public sector bodies without paying compensation to the dismissed managerial staff[30] due to premature termination of employment contracts. In such cases the courts have acknowledged that non-payment of compensation for premature termination of employment contracts does not constitute a violation of the principle of equality, due to the generality of its implementation throughout the public sector.[31]

2.2. Operational particularities

The content and nature of job tasks lend to the employment contracts of managerial staff operational particularities which affect the financial conditions and relationship of such employees with other employees when exercising collective labour rights.

These operational particularities lie in the following:

* *2.2.1 Individualisation of the terms and conditions of employment*

The terms and conditions of employment of managerial staff are set out for the most part in their individual contracts of employment, and usually include a) job tasks, b) emoluments, c) the term of the contract, which is usually a fixed-term contract, or the manner of terminating the employment relationship, d) a confidentiality clause and a clause barring assumption of duties in a competing enterprise, e) compensation for the termination of the employment relationship after a certain time has elapsed and/or special compensation for dismissal due to premature termination of a contract of employment.

When a managerial employee's job is filled by someone from inside the company by internal advancement, the assignment of responsible duties is, first of all, not revocable. Revocation of responsible duties constitutes a wrongful change in the terms and conditions of employment, unless the works rules make special provision that revocation does not constitute a wrongful change.[32]

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[30] Law 1884/1990, No. 40, paras. 5 and 6, Law 2173/1993, Article 5, especially para. 3 regarding non-payment of compensation.

[31] SCD 45/1997, RLL 1998, p. 321.

[32] *SCD 569/1999*, BLL 2000, p. 16. Mobility of staff. Transfer upon agreement to a position with lower benefits is not a wrongful change. *SCD 1504/1997*, RLL 1998, p. 268.

Individualisation of the terms and conditions of employment refers to two sectors: a) managerial job tasks and b) terms and conditions of pay and employment.

In effect, the ***strong bargaining position*** of the employee who assumes managerial duties ***may determine through the provisions of an individual contract of employment*** the level of pay, other benefits, working conditions, content of tasks and extent of managerial prerogatives and any effects of the employer's ability to terminate the employment relationship or the assignment of responsible duties.

The inability of an employee to specify, in an individual contract of employment, better emoluments than those of other employees and satisfactory consequences of any termination of his employment relationship or revocation of his responsible duties, could be a negative criterion for his characterisation as a member of managerial staff. To be sure, this aspect will be assessed in combination with the other factors determining the managerial character of his job tasks (*corporate accountability for his duties, employer's initiative, relationship of confidentiality with the employer*).

By and large, the individualisation of the terms and conditions of employment of managerial staff can be ascertained from two elements: a) prevalence of the provisions of an individual contract that are more favourable than the provisions of collective agreements, works rules and labour legislation, and b) the express or tacit exemption of their working time from the regulations on working time limits.

2.2.2 High levels of pay

One result of ***the exceptional qualifications*** and ***vital importance of the job tasks*** of managerial staff is their ***high levels of pay.***

As a rule, managerial staff are better paid than other employees, who are their subordinates, and their pay is much higher than the statutory wages corresponding to their degree of skills in the sector, occupation or enterprise in which they are employed.[33]

It is worth noting that case law places particular emphasis on the level of pay, which in many cases is raised to an element practically on a par with responsible and managerial tasks. Theory indicates that this view is incorrect.[34] In general high pay

[33] SCD BLL 2000, p. 494 and SCD 621/95, BLL 1996, p. 395, SCD 537/1997, RLL 1998, p. 789: an employee of a big company receiving additional pay on the basis of business results.

[34] ***I. Koukiadis*** (1995), p. 264, with references to case law in note 182; ***K. Papadimitriou***, 1994, BLL, p. 1137.

compensates managerial staff for their contribution to the company's progress and the time devoted to their job tasks with no special reward, depending on available working time. That is why provision is made for various additional benefits, such as [*a) benefit in the form of accommodation or reimbursement of rent paid on home, b) a car with or without chauffeur, c) a fixed sum of money for hospitality-entertainment expenses, d) insurance pension plan, e) summer holiday expenses]*[35] *e) increased compensation after expiry or premature termination of the contract of employment.* These regulations make the financial terms and conditions of employment attractive.

* *Disassociation from trade union activity*

(Membership in trade union organisations – and representation in collective bargaining)

The position of managerial staff in the hierarchy and the bond of confidentiality with the employer identify them with the interests of working employers. This situation destabilises and effectively negates their freedom to develop industrial action.

There are two aspects to the problem[36]:

a) *with regard to membership in a trade union organisation.* The employer-like character of their job tasks makes it difficult to characterise them as employees whose interests are in opposition to those of the employer. That is why they are not accepted by trade union organisations. Their membership in trade unions, particularly those at enterprise level, together with the other employees, may indicate a warping of trade unionism and the creation of employers' *"yellow unions"*[37]**.**

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[35] SCD 1123/199 RLL 1994, p. 1079: Evaluated among the criteria for the status of managerial employee were high pay (GRD131,500 on 1.1.84), which was much higher than that set by law (GRD26,700 on 1.1.84), as well as the emoluments paid to the company's other employees and additional benefits, such as expenses for meals, receptions and public relations at the managerial employee's absolute discretion.

[36] ***K. Papadimitriou*** (BLL 1994), pp. 1148-1150.

[37] ***A. Kazakos***, 1997, BLL 165 et seq., especially p. 171 where note 19 gives a brief presentation of the positions of case law and theory regarding membership of managerial staff in trade union organisations. The author contends that it would be operationally and teleologically correct to exclude managerial staff, in the prevailing narrow sense of the term, from employees' trade union organisations. ***"…collective representation of the interests of workers would be adulterated if managerial staff were to take part in trade union organisations…".*** Ε.Θ. 388/95, BLL 1996, p. 1309 and commentary by S. Vlastos, RLL 1996, pp. 859-862.

Although in general collective action is not ruled out,[38] it is not favoured because of the supervisory position of managerial staff vis-à-vis the other employees and their qualitative identification with the mapping out and implementation of corporate policy. However, only an extremely limited number of managerial staff in a company have these characteristics and it is difficult or impossible for them develop independent trade union action on the enterprise level on the basis of Law 1264/1982[39] as well as on the sectoral or occupational level.

In Greece we have no trade union organisation analogous to the Confédération Générale des Cadres, where most of the top executives in French companies are concentrated. Every type of executive (lower, middle and higher) who are not managerial staff belong to the occupation-based trade union organisations for their speciality, or the occupation-based-type enterprise-level organisations, when they have risen to a managerial position through advancement in the company. A characteristic example is that of the Union of Industrial Technical Scientists (STEB), which unites all qualified engineering graduates of higher education, geologists and graduates of Technical Educational Institutes (TEIs); the STEB appears to be the form of trade union organisation for executives in industry. However, the responsible tasks of these workers are not enough to characterise them as top executives, and thus this is the occupation-based trade union organisation for technical graduates of universities and TEIs, some of whose members may be company executives (lower, middle and higher), without ruling out the existence of top executives in the highest positions, i.e. managerial staff.

b) with regard to regulation of working conditions by collective agreement. The lack of trade union representation for managerial staff rules out the possibility of regulating their labour rights through collective agreements of at least a sectoral or occupation-based nature, and therefore their employment relationships are regulated by individual contracts of employment only. At any rate, their minimum wages result in each case from the current enterprise-level, sectoral-level or occupation-based collective agreements.

Finally, it should be noted that it is possible to draw up collective agreements only on the level of the sector or occupation, for reasons of practical difficulties in their trade union representation. The conceptual characterisation of managerial staff as an occupation for preparing an occupation-based collective agreement is extremely risky because their specialities are so numerous. However, it is also difficult to prepare a

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[38] Law 1264/1982, Article 7, para. 1 and Article 14, para. 3(a).

[39] Article 1, para. 1(2) of Law 1264/1982 in combination with Article 78(2) of the Civil Code, which requires at least 20 workers for the establishment of a trade union.

collective agreement on the sectoral level for only one type of skilled worker.[40] These difficulties are connected to the problems of operation of collective autonomy on the basis of the aspect of the theory regarding the fixed number of types of collective agreements, in accordance with Article 3 of Law 1876/1990. On the enterprise level, however, the employment relationships of managerial staff fall under the enterprise-level collective agreement, which covers all types of skilled workers, regardless of whether such workers are members of the representative trade union organisation that is party to the agreement.[41]

Of interest is the regulation of the employment relationships *"of company executives"* through ***works rules***, which are compiled in the form of a collective agreement (Article 2, para. 6 of Law 1876/1990 in conjunction with Article 8 of Law 2224/1994). In this case the trade union organisation appears to regulate the employment relationships of employees who would not belong to it if strict criteria regarding their membership in trade union organisations were applied. However, the question is an open one of whether the works rules really cover managerial staff or whether they are restricted to employees with duties requiring skills and responsibility.

From the aforementioned it is evident that the legislation does not prevent managerial staff from exercising trade union rights. However, there are difficulties regarding their trade union activity; mainly they must not join the trade union organisations of the other employees. It is therefore necessary to examine the status of managerial employee so as to identify those executives who perform key managerial tasks, and not to confuse them with the other employees who perform tasks requiring skills and responsibility. The membership registers of the enterprise-level trade union organisations may be of help in this direction, as they will bar managerial staff in the enterprise from membership, and possibly the works rules, as they will exclude managerial staff from their scope.

Top executives themselves should devote attention to their labour interests, because if there is a suitable workforce they will set up trade union organisations. However, other executives, i.e. employees performing responsible or managerial tasks, because of the individualisation and flexibilisation of their terms and conditions of employment, may remain outside the trade union organisations. Perhaps the trade union movement has not devoted the necessary attention to their employment relationships.

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[40] ***I. Lixouriotis,*** *The Social Partners,* 1992, pp. 11-112.

[41] Article 3, Law 1876/1990 regarding types of collective agreements. ***M. Dotsika,*** The Effectively Binding Nature of Collective Regulations, RLL 2000, p. 1105, especially pp. 1116-1117 regarding the general binding nature of enterprise-level collective agreements.

3. Effects on terms and conditions of employment

Although managerial staff carry out duties involving a great deal of initiative and decisive effects on the organisation and management of the company, they are still employees employed in a position of subordination, since legally their bond with the employer is one of subordination. However, despite the fact that labour rights in general are regulated by the law by rules of public order, which can be amended by more favourable regulations in individual employment contracts and collective labour agreements, managerial staff ***are excluded from the regulations on working time limitations.***

The findings of case law on implementation of Article 2 of Law 2269/1920 identify the exceptions from the regulations on working time (*length of the working day and working week, weekly rest period on Saturdays and Sundays, the right to annual holidays*) in the following issues:[42]

- not subject to legal working hours[43]
- no recognition of the right to be paid for overtime[44]
- no ban on Sunday or night work and in general lack of respect for the right to week rest periods[45]
- no right to an enhanced rate of pay for work performed on Sundays, public holidays, at night or away from home base[46]
- failure to implement the provisions of Article 659 of the Civil Code regarding work exceeding that agreed upon.
- no right to annual holidays[47]
- failure to implement working time arrangements[48] since they are not implemented in statutory or contractual working hours.

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[42] ***H. Goudou, G. Leventis,*** 1988, p. 43; ***K. Papadimitriou,*** 1994 BLL, p. 1137; ***A. Metzitakos***, 1996, RLL 1996, especially pp. 532-533; ***I Koukiadis*** (1995), p….; ***L. Dassios***, 1999, pp. 267, 607, 617.

[43] SCD 597/1980, SCD 23/1978, SCD 236/1985, SCD 1908/1990, BLL p. 1127.

[44] (SCD 1029/1980, SCD 1063/1975, SCD 230/1985, SCD 23/1978, SCD 1091/1990).

[45] SCD 1029/1980, SCD 233/1968, SCD 106/1973, SCD 674/1991.

[46] SCD 1043/1972, SCD 129/1963.

[47] SCD 81/1984, SCD 96/1977, SCD 191/1990, RLL 50, p. 299, SCD 1908/1990, RLL 50, p. 302, SCD 1601/1988, BLL 1989, p. 447, Rhodes Single-judge Court of First Instance 24/97, p. 528, BLL 1998, p. 528, SCD 537/1997, RLL 1998, p. 789, SCD 1201/98, BLL 1999, p. 289. No right to leave. A valid complaint filed against interruption of operation of a company due to leave, and Study on annual leave, BLL 1998, p. 743.

In any case, an absolute, unconditional exemption of managerial staff is questioned nowadays, due to the principles laid down in Presidential Decree 88/1999, Article 14(1a) referring to protection of workers' health and safety. At present there is no legislative regulation regarding such protection.

In practice, flexible working hours cause acute ***confusion between private time and time on the job.*** There is no monitoring of the time job tasks are started or ended. Attendance at meetings inside or outside the workplace, public relations activities aimed at promoting the company's interests and constant occupation with administrative matters prevent the formal evaluation in monetary terms of working time, which is elastic and extremely long. Thus emoluments include pay supplements and numerous other financial benefits and facilities, which alleviate the feeling of burden on workers and indirectly remedy the lack of correspondence between pay and working time.

Thus the question of top managerial staff's working time remains open and it is ***technically difficult for the law to introduce rules*** into questions where *the contracting parties (employer and worker) leave no room for formal monitoring by any third parties, even by the contracting parties themselves.*

In general, ***termination of a managerial employee's contract*** is governed by labour law without exception and notwithstanding any special, case-by-case legislative interventions to terminate managerial staff's employment contracts in public sector bodies without compensation[49].

Contracts of employment are usually valid for a fixed term. Any compensation paid to the managerial employee due to premature termination of his contract or due to its expiry is regulated in this framework.[50] However, failure of managerial staff to adhere

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[48] ***M. Dotsika,*** *Working Time Arrangements in Article 5 of Law 2874/2000, Purposes – Effects – Content – Means* (RLL 2001). Working time arrangements are the setting of an upper limit on hours of employment within a period of time (reference period), with a fluctuating working day. Such arrangements are regulated by collective agreements, in accordance with ***Article 5 of Law 2784/2000*** and refer to 138 hours per year with the granting of 92 hours of additional rest time, for an average working week of 38 hours. In effect, the arrangements are aimed at the abolishment of overtime exceeding maximum working hours and the productive management of the time not worked by making three hours per week subject to arrangements and providing two additional hours of rest for the total of 46 working weeks per year.

[49] ***Law 1884/1990, Article 40, paras. 5 and 6, Law 2173/1993, Article 5, especially para. 3.***

[50] ***I. Koukiadis***, RLL 1998, p. 769. A valid dismissal of top executives on the basis of the managerial prerogative, SCD 837/97, BLL 1998, p. 617. Breach of confidentiality constitutes

to working time limits affects the termination of the employment contract and does not rule out dismissal during a period of leave.

For managerial staff who have come up through the hierarchy, revocation of their responsible duties does not constitute dismissal or wrongful change, provided revocability of responsible duties is expressly regulated in the company's Works Rules or in the individual agreement.

4. Managerial staff in the banking sector

3.1. Overall picture of the hierarchical and pay structure of employment relationships

The *hierarchical structure of jobs* in the banks is regulated by the Works Rules (WR), where the conditions for employees' career development are laid down. Thus despite the organisational particularities of every bank, the hierarchical structure of jobs and the system of career development show a *significant uniformity*[51], which is to a large

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serious grounds for termination. Athens Single-Judge Court of Appeals 1451/1996, BLL p. 1240; ***D. Travlos-Tzanetatos*** (1987 RLL); ***K. Papadimitriou*** (BLL 1994), p. 1137 et seq., especially p. 1148; ***A. Metzitakos,*** RLL 1998, p. 769.

[51] The hierarchical structure of jobs in the banks in a nutshell:

1) *Top executives:* These employees hold high positions in the hierarchy in the head offices and branches of banks having an extensive network in Greece (General Managers, Deputy General Managers, Managers, Deputy Managers, Regional Directors, Branch Directors, etc.) They are highly qualified people who have a long working relationship with the bank. The customary method for filling the highest positions is an open call for expressions of interest from people with the necessary qualifications in the external labour market. When these positions are filled by the workings of the internal labour market, a system of hierarchical advancement based on promotion criteria is implemented. Such employees may ***conditionally*** *be characterised as managerial staff*, provided the criteria described above apply.

2) *Directors:* These employees cover a relatively intermediate level of hierarchical positions in banks' head offices. They are also placed in directors' positions in large branches in the network.

Special associates: These employees have special qualifications. They fill jobs requiring specialist knowledge, such as studies and experience of new banking products, services, etc.

General staff: These employees cover the majority of jobs. Their qualifications are mainly acquired on-the-job, following training.

extent due to the organisational structure of the banks as well as to the influence of the organisational structure in the National Bank of Greece and the other public sector banks.

The banks' new WR, following the restructuring of the late '90s caused by the mergers and acquisitions, reinforced policies of flexibility in human resources management. The new WR redefined the levels of hierarchy, together with promotion procedures and the criteria and qualifications for career advancement. The new WR are regulated by collective bargaining on the enterprise level and are drawn up by collective agreement[52]. A feature of the new WR was the weakening of length of service as a criterion for promotion, broadening of managerial prerogative when filling positions in the upper hierarchy and the adoption of revocability when assigning upper hierarchy duties.

A similar *structural homogeneity can also be seen in the banks' pay policy.* The *statutory emoluments* of all workers are established in accordance with the *Unified Pay Scale* (UPS),[53] which was laid down in the 1982 sectoral collective agreement.

Auxiliary services staff: These employees cover all types of auxiliary services required by the banks. They include guards, drivers, photocopier operators, etc. They are relatively low-skilled gymnasium or lyceum graduates.

Cleaning staff: These are staff providing office cleaning services and other manual labour, such as serving, to clerical staff, etc. Most of the people hired for such positions are women, a fact that brings about a certain indirect discrimination against women, since this is a category of low-paid, unskilled workers with no career expectations that "happens" to consist exclusively of women.

Other categories of general duties: These are employees meeting banks' special needs. They have a variety of qualifications, depending on the needs of each bank.

[52] *Article 12, para. 6 of Law 1767/1988 in conjunction with Article 2 of Law 1876/1990 and Article 8 of Law 2224/1994.* Up to 1988, the drawing up of Works Rules was embodied in the employer's managerial prerogative, and in public sector banks operating under a special legal regime WR fell under the special supervision of the state, i.e. of the Ministers overseeing the country's financial intermediation system. After 1988 WR were regulated by enterprise-level collective bargaining and agreement between company management and the representative trade union organisations. In the 1990s, with the development of mergers, acquisitions and privatisations, new WR were created through collective bargaining; they were aimed at ironing out the differences in employment relationships in the merged companies.

[53] On the basis of the UPS, employees in the banking sector are divided into three (3) pay categories, as follows:

Beginning on 1.1.82, this collective agreement introduced three basic categories of pay with the corresponding pay scales covering all employee specialities. The UPS links an employee's pay with his position in the hierarchy/grade, up to the grade of Manager and Deputy Manager, which corresponds to the second-to-last stage in the hierarchy for basic staff[54].

In this way a unified system of guaranteed evaluation of every employee is created, through a general categorisation of staff, according to the scope of their duties. Implementation of the UPS permits differentiation of employees according to pay by including them in a specific bracket on the pay scale and granting them pay supplements based on their length of service, personal/family situation and working conditions. The pay scale of the sectoral collective agreement covers all workers employed in the *banking sector*, i.e. in *all banking enterprises as well as enterprises providing related banking services, which are usually subsidiaries of the banks specialising in a specific range of banking services and products.* Workers employed in enterprises that undertake to provide banks with all types of services, such as studies, office cleaning, etc. do not come under the banks' sectoral collective agreement, because their employers are not enterprises in the banking sector.

The UPS, in combination with extra pay (pay supplements), determines the statutory pay of banking sector employees in a general, impersonal way. As a result, the main financial issue in collective bargaining is the percentage indexation of basic pay corresponding to the brackets on the pay scale[55] and other regulations of an

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Basic staff: This category includes all accounting staff, tellers and technical staff as well as collectors and others receiving comparable pay.

Auxiliary staff: This category includes all staff providing auxiliary services, such as messengers.

Cleaning staff: This category includes workers lacking experience and knowledge who provide cleaning services. It consists almost exclusively of women. In the '90s cleaning personnel were no longer being hired and the banks preferred to hire cleaning companies to provide cleaning services for their offices and premises. Sub-contracting such services reduces the scope of the sectoral collective agreement and introduces a form of flexibility to labour relations in the banking sector.

[54] ***Greek Federation of Bank Employee Unions (OTOE). Structure, Role and Action Taken in the Banking Sector,*** *Athens 1998, INE/OTOE. This publication presents the structure, strategies and activities of the OTOE. With regard to the OTOE's sectoral pay policy and most important strategic options in this regard, see pp.29-32.*

[55] M. Dotsika, *"Pay Policies and Collective Labour Relations",* Labour Relations Review (LRR) 2000, pp. 29-49.

institutional nature, such as housing loans, equality policies, protection of the family, parenthood, etc. The sectoral collective agreement is usually concluded annually, but in the '90s, biannual collective agreements were drawn up, which regulated wage increases for two years.

On the level of each individual enterprise, enterprise-level collective agreements are compiled, or informal agreements on wage policy are drawn up between bank management and the enterprise-level trade union organisation. Alternatively, bank management may set wage policy as part of its managerial prerogative. In any case, the operation of the UPS as a basic means of wage policy-making has hindered the creation of other enterprise-level pay scales and the enterprise-level pay regulations refer to regulations on special pay supplements to the UPS.

These regulations have an indirect effect on the employment relationships of managerial staff. From the standpoint of pay, the sectoral and enterprise-level collective agreements determining statutory pay could logically be overridden by the individual agreement of a managerial employee. Internally, a rise in the hierarchy to managerial positions determines the preconditions and the consequences of any revocation of managerial duties.

With regard to working time, the general exemption of all managerial staff from working time limits also refers to managerial staff in the banks.

3.2. Employees with responsible duties (executives) and managerial staff (top executives)

At first glance, it would appear that ***employees with responsible duties*** are placed in all ***top positions in the hierarchy*** *(the top executive positions)* ***to which promotion is made at the discretion or rather at the absolute discretion of management.*** But although such employees stand out from the other employees in the hierarchy, they ***do not always conform to the typological characteristics of managerial staff*** created by case law and theory. On this point, the new Works Rules attempt to give answers through regulations that exclude from their scope certain high-ranking employees[56] or introduce regulations for flexibility and

[56] The Works Rules for EFG Eurobank Ergasias, which were created by enterprise-level collective agreement on 12.9.2000, exclude from their scope the following:

* the members of the Board of Directors, who provide services in a position of subordination
* General Managers
* Deputy General Managers
* Assistant General Managers
* top executives, whatever their title

revocability in assigning responsible duties[57]. In any case, these regulations are somewhat vague and therefore inadequate to determine who is a top executive.

Practice has shown that people who are employed in managerial posts as an expression of the will of the banking société anonyme, or who report to or sit on the Board of Directors, or who report to the general meeting, are managerial staff, because, as also mentioned above (section 2.1.1.), they are active employers.

A problem arises for those employees who perform responsible duties on a high hierarchical level. Then, on the basis of real circumstances, the status of managerial employee must be examined case by case. The Works Rules may help in this direction, provided they include clear regulations with regard to the concept of

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* engineers

* doctors

It is worth noting that these Works Rules do not include regulations regarding career advancement, nor do they refer to the existing hierarchical grades. As a result, there is great flexibility in determining which employees may be characterised as top executives.

[57] ***Works Rules for the National Bank of Greece,*** which were created by enterprise-level collective agreement on 19.2.2001 and include a system of promotion and evaluation organised by zone (*Articles 5-6, 9 and 12-13),* including express regulation with regard to revocability (Article 9, para. 1). The hierarchical grades of this regulation regard Zone A, i.e.:

* Directors of Management Divisions

* Deputy Directors of Management Divisions

* Positions equivalent to the above

* Heads of Branches and other units

The following job grades correspond to administrative ***Zone A:***

1.1.1. Branch of main staff	jobs	Technical staff branch	jobs
Manager	50	Manager	1
Deputy Manager A	200	Chief Engineer	10
Deputy Manager B	300	Assistant Engineer	25
Department Heads A	**1,050**	**Engineers A**	**40**
TOTAL	**1,600**		**71**

These regulations promote the idea of characterising 1617 employees as top executives. However, addressing their promotion internally through the Works Rules is not enough to characterise them as managerial staff. It should be noted, however, that their working hours are still pending and it appears that they will be examined together with the working hours of special units and the rules for placing executives (the last clause of the WR).

responsible employee *(executive)* and managerial employee *(top executive)* which are exempted from the Works Rules.

Case law[58] has acknowledged that employees in jobs higher than those covered by the Works Rules, regardless of the ability of incumbent employees, who have the relevant qualifications, to express interest, are characterised as managerial staff.

A result of having the status of managerial employee is that the rules regarding working time limits are not implemented.

In practice, it is common knowledge that the banks have no excuse for the large number of managerial staff they have at their disposal, compared to other companies providing services which operate through a central management and executive services unit and a network of ancillary offices and branches. The widescale decentralisation of key managerial business competencies is not enough to create a plethora of top executives.

We are of the opinion that, in large companies and thus in the banks, the executives who perform responsible duties, such as Branch Directors or Managers of network sectors or in top administrative positions, Deputy Managers etc., are not necessary managerial staff but responsible, highly-skilled executives, who perform their duties within a circumscribed range of initiatives. Without exception, such employees come under the protection of labour law and are therefore subject to working hours. In this framework, a restriction or a ban on overtime exceeding maximum working hours constitutes managerial prerogative, but such policies cannot apply to managerial staff, who are not subject to set working hours.[59]

Everything we have described in general with regard to the characteristics of managerial staff's employment relationships and their effects on labour rights also holds true for managerial staff in banks. However, the organisational restructuring taking place in the sector, and the mergers and acquisitions in particular, increase the need for administrative flexibility and assignment of responsible duties which are

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[58] *SCD 26/1996,* RLL 1998, p. 262, which acknowledges that managers' posts not covered by the Works Rules in the Bank of Greece are managerial staff positions.

[59] *SCD 1908/1990, BLL 1991, p. 1126. The post of Deputy Manager* in an American bank is a managerial position. The court ruled that the employer is entitled to abolish a practice of paying compensation for overtime by banning overtime work. In this case the court did not examine whether there was a need for overtime or not, and focused its interest on banning overtime. At any rate, this decision is contradictory, because it judges the legality of revoking payment for overtime worked, whereas the fixed position of case law is total exemption of managerial staff from the rules regulating working time.

in fact revocable. The trade union movement follows this trend by helping to draw up the new works rules in the form of enterprise-level collective agreements.

In any case, characterising employees as directors, managers, deputy managers, skilled employees, top executives in works rules does not make it easier to clarify the legal status of their employment relationship, but on the contrary cultivates violations of labour legislation.

In our opinion, one way of addressing the problem of discrimination between executives and top executives/managerial staff is by express *clarification of managerial jobs* which are not part of staff hierarchy but report directly to management and have broad competencies involving business initiative. Such jobs *are filled by managerial staff* following the procedure laid down by management or described in the works rules. Other executives fill jobs not involving managerial duties.

Top executives shall provide their services in accordance with:

* the terms of the individual employment contract, reporting directly to bank management.
* they will be expressly excluded from all types of regulations regarding working time limits.
* and they *may* be subject to:
* certain regulations in the works rules, e.g. matters of disciplinary supervision,
* the regulations on pay in the enterprise-level collective agreement or the bank's pay policy as regards determination of statutory emoluments.

The other executives shall provide their services in accordance with:

* the terms of the individual contract of employment, subject to supervision of their internal job hierarchy
* all types of regulations on working time limits
* and shall be subject to:
* all the regulations of the Works Rules
* all the regulations of the enterprise-level collective agreement or the banks' policy on pay and employment represents as regards determination of pay and terms and conditions of employment.

If there is no clear distinction between managerial and non-managerial executive positions, this causes confusion between them because of executives' responsible duties, regardless of the extent of their participation in the employer's corporate policy or of their level of pay, which includes the various pay supplements such as allowances for responsibility, public relations, etc., which are provided for by enterprise-level collective agreement or paid voluntarily by the employer.

Employment of executives with no restrictions on working hours, involving the tacit abolishment of working time limits and working time monitoring, is another move in this direction, as are the pay policy of closed wages, the lack of enterprise-level collective agreements and the implementation of systems for linking pay with productivity using qualitative criteria, determined by the employer.[60]

Thus company restructuring and the increased responsibility of employees with the increasing number of "responsible executives" diminish the political value of shorter working time, since it will refer to low-grade and low-paid staff who perform standardised work. Flexibilisation of working time is therefore promoted through executives' terms and conditions of employment. State supervision is unable to restrict this situation through the supervisory competency of the Labour Inspectorate.

Insofar as regulation of working time is in workers' direct interest, the main burden of designing suitable rules is shouldered primarily by the enterprise-level trade union organisations, coordinated on the branch level by the OTOE as the competent branch-level union. That is why the operational needs of the bank must be studied along with the individual services and jobs and the rate at which the market for banking services functions.

Executives are at present the most vulnerable group of employees. Their employment relationships have not received special treatment. As a result, flexibility of their working time has been introduced and there is a lack of transparency on crucial issues such as their career advancement, productivity-related pay and preservation of positions of high responsibility. The same problems, albeit more acute, affect managerial staff, who at the present period in Greece are not covered by collective regulations.

Concluding remarks

1. Conceptual definition

Greek labour law does not make provision for a special labour regime for company executives. Executives in all kinds of companies are employed in positions of subordination and are subject to labour legislation with regard to all their rights.

From the standpoint of labour law, executives are divided on the basis of their job tasks into two categories: ***a) executives with special duties,*** **who are employees**

[60] E.g. Works Rules of the EFG Eurobank Ergasias, *Article 5*: "Regular pay both of basic and auxiliary staff consists of a ***single sum*** *(total contractual wage)*, agreed upon in each instance between the employee and the bank and which includes and covers all his/her statutory emoluments, from any cause or source whatsoever…"

with regard to all their rights and obligations. Executives are employees with experience and/or outstanding qualifications who perform skilled, responsible duties. B) ***top executives, who are not employees with regard to all their rights and obligations. Managerial staff – top executives*** are employees who perform employers' duties and take key initiatives in mapping out and planning corporate policy; they are linked to the employer by a relationship of high confidentiality.

The ***status of managerial employee – top executive differs from that of executive*** because of its direct, institutional relationship with the employer's will. Thus the title of managerial employee – top executive or the job title is not enough. The legal characterisation of managerial employee results from the overall evaluation of a large amount of objective data (position of responsibility with initiative in mapping out and implementing corporate policy, outstanding qualifications, performance of employer's duties, relationship of confidentiality with the employer, high level of pay exceeding that of their subordinates, etc.). Taken as a whole, these data are comparable to those of the company's other employees and the company's management bodies. The positions of legal theory and case law put forward a restrictive interpretation of the concept of managerial employee, thus ensuring implementation of labour legislation regarding working time limits for all workers regardless of their level of pay or their job responsibility.

Managerial staff are de facto few in number. An increased number of executives in a company usually means an internal restructuring of the company, with an increase in the number of workers in responsible and specialised jobs; rarely does it mean decentralisation of key company competencies with an increase in managerial staff. By the same token, a reduction in the number of executives may mean not that companies are shrinking but that they are re-evaluating the structure of the hierarchy and redefining or reducing the number of positions of responsibility which have become obsolescent or whose content has been externalised. At any rate, it should be clear that not all employees with experience and outstanding qualifications are executives with special duties, nor is everyone an executive who bears the title but has low formal qualifications and occupies a position that is not key to company management.

2. Consequences

Labour law reserves special legal treatment only for ***managerial staff – top executives.***

In particular, with regard to the consequences of the status of executive, the following may be observed:

1) working time limits

Labour law is applied indiscriminately to all executives, with the exception of top executives – managerial staff, who are not subject to legal protection of working time limits and the relevant labour rights (extra pay for overtime exceeding maximum working hours and work performed at night, on Sundays, on public holidays, during weekly rest periods, annual leave, etc.).

2) membership in a trade union organisation

Executives, with the exception of top executives – managerial staff, have the right to join trade union organisations of all types and organisational levels, in accordance with the terms and conditions laid down in the statutes of the trade union organisations. Top executives are necessarily excluded from the enterprise-level trade union organisations, because their duties include employers' duties, and thus their membership would disrupt the independence of the trade union movement from employer intervention. Therefore holding a position entailing employer duties should be addressed in the statutes of the trade union organisation and should constitute a basis for expulsion or temporary suspension of membership. In any case, top executives – managerial staff have the right to join trade union organisations solely for top executives. In practice it is difficult to create such trade union organisations, and no trade union organisations for executives or top executives have been noted in the banking sector.

3) subjection to collective labour agreements

Collective labour agreements, especially at enterprise level, and works rules may regulate the employment relationships of all employees of a company, including top executives. Collective agreements may also help clarify the concept and the labour rights of managerial staff by creating special regulations on matters of interest to other executives, such as the terms and conditions for acquiring the status of executive or top executive as a result of advancement within the company and the financial consequences of revoking responsible duties, e.g. compensation for premature revocation of responsible duties, or the successful completion of the period for which they were assigned.

3. Special issues regarding the labour relations of managerial staff.

Key issues regarding the labour relations of managerial staff as well as executives are safety at work, advancement within the company and regulation of working time.

One of the main problems is the lack of a clear distinction between top executives and other executives in positions of responsibility. Confusion in this regard has the following consequences:

* *deregulation of working time* and dissociation of pay (regular emoluments) from the length of the working day and the working week, with further confusion regarding the right to be paid for overtime exceeding maximum working hours and the right to weekly and annual rest periods.

* *deregulation of the conditions for advancement within the company* by leaving the employer free to choose which people will be assigned responsible duties.

* *lack of transparency in assigning and revoking responsible duties*. This helps preserve indirect discrimination against women, who occupy a small number of jobs despite the relatively equal distribution of the two sexes in the internal labour market from the point of view of real qualifications.

* *laxity of legal protection of workers from adverse changes in terms and conditions of employment* due to revocation of responsible duties.

These elements are extremely apparent in labour relations in the banking sector, and are being taken forward in the new works rules compiled after the mid-'90s.

4) Regulation of managerial staff's labour relations

Top executives' working time was the only issue that has not been included in the regulatory intervention of labour law. However, Presidential Decree 88/1999 lays down regulations aimed at protecting health and safety at work, which also apply to top executives. The need to regulate such matters affects top executives and all other executives not working fixed hours.

Regulation of working time is key to ensuring access to such jobs for women, since motherhood and parental duties have become indirect, invisible criteria for the exclusion of women in general, not just young women of reproductive age and married or single or mothers. Working time conforms to the current male-dominated model, where vital daytime hours are devoted solely to work. The ideal executive is an employee who devotes all his/her time to work, totally and with total flexibility. Evaluation criteria for employees are influenced by confusion between private time and time spent on the job and thus, for example, a dedicated employee is one who seeks constant information and training with regard to internal issues and develops broad social action which promotes the occupational prestige of the employee and the interests of the company. ***Extreme flexibility of working time*** puts pressure on all employees, men and women alike, to adapt their lives to the ***model of an***

executive in the new economy. Thus the ideal executive is ***a neuter professional, above family relationships and concerns, invulnerable to competitive processes of advancement in the company and constantly amenable to changes in his/her working, social and personal life.***

This social model produces indirect discrimination against women and introduces the desocialisation of professional life, which affects men and women to an equal degree. The *dehumanisation of executives' terms and conditions of employment and the reconcilement of personal and professional life* are now elements influencing regulation of working time alongside the principles of protecting workers' health from *fatigue* and *occupational stress. Protection of workers' health and the principle of equal* opportunities must serve to eliminate *indirect discrimination against women* or other social groups, e.g. parents of both sexes, people over the age of 45, especially men, who are at high risk for heart disease. These principles must be implemented in the procedures for filling both top executive positions and executive positions of responsibility.

Regulation of working time can be included in works rules, collective agreements or working hours rules, which will also include a definition of the concept of executive in a position of responsibility as opposed to top executive. One reason top executives should be exempted from the Works Rules is that such employees are unable to join the representative union at enterprise level. However, the regulations for filling top executive positions through advancement within the company may be included in the Works Rules, with regulations regarding the beginning and end of assignment of managerial duties.

Therefore an important issue is the understanding and regulation of executives' employment relationships with the distinctive features we mentioned above in the scope of enterprise-level collective agreements and Works Rules in the legal form of enterprise-level collective agreements. Regulation of executives' employment relationships will have an indirect impact on and improve the terms of the individual employment contracts of top executives – managerial staff, since the terms of the latter's individual contracts should be superior to the terms and conditions of employment of the executives who are their subordinates.