HELLENIC REPUBLIC

GREEK NATIONAL COMMISSION FOR HUMAN RIGHTS

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PROPOSALS ON THE ELIMINATION OF DISCRIMINATORY TREATMENT OF FOREIGN WORKERS AS TO THEIR COMPENSATION FOR ACCIDENTS AT WORK

1. The Royal Decree of 24 July 1920 'concerning the codification of the laws on the responsibility for compensation of workers or office workers who are victims of accidents at work' (OJHR A' 191/25.8.1920), in conjunction with Law 551 of 31 December 1914 / January 1915, lays down the conditions for the compensation of "workers or office workers" by the "owner of the enterprise" for "accidents resulting from a violent occurrence" which happened to workers or office workers during the performance of their duties or "by reason of it" (Article 1). A basic condition for the implementation of the provisions of the Royal Decree in question is that the interruption of work by reason of the accident should last more than four days.

2. According to Article 2 of the above Royal Decree, the following are obliged to pay compensation:

- Employers in building and other construction works
- Owners of enterprises which are carried on in any kind of industrial and craft industry site, workshops, or establishment where use is made of mechanical tools
- Owners of transport "by land or water", loading and discharging, and warehousing enterprises of any kind

- Owners of mining and quarrying enterprises and of any other enterprise or undertaking where explosive or toxic substances are used, or use is made of machinery.

The same article makes it clear that the state and any other legal person which employs manual or office workers in jobs or enterprises such as those mentioned above are also obliged to pay this compensation.

3. The provision of Article 3 of the Royal Decree of 24 July 1920 determines the extent of the compensation, which it graduates in five basic categories:

- In the event of complete and permanent disability, the compensation includes six years' pay
- In the event of partial and permanent disability, the compensation includes six times the sum by which the annual income from pay of the injured party has been reduced or may be reduced
- In the event of complete temporary disability which does not extend beyond two years, the compensation is on a daily basis and is equal to half the pay which the injured party would have received on the day of the accident
- In the event of partial temporary disability which does not extend beyond two years, the compensation is on a daily basis and is equal to half of the reduction which the pay which the injured party was receiving on the day of the accident undergoes or may undergo.
- In the event of death, the compensation includes five years' pay.

4. The provision which raises serious issues of legality, in the light of the Greek constitutional *acquis* and that of international and European human rights law, is Article 5 of the Royal Decree of 24 July 1920,[1] more specifically the following three sub-paragraphs:

[1] See also I. Lixouriotis, *Το νομικό καθεστώς του μετανάστη μισθωτού στη Ελλάδα* [The legal status of the immigrant employee in Greece], Ant. N. Sakkoulas, Athens 1998, pp. 435 – 437; S. Lekeas (ed.), *Εργατικό ατύχημα* [The accident at work], Law Library, Athens 2002, pp. 109, 119 – 133, 163 – 166.

- According to the first sub-paragraph, foreigners are entitled to the payment of the third and fourth category of compensation only if they live in Greece, and to payment of the fifth category of compensation only if they were living in Greece at the time of the accident.
- According to the second sub-paragraph, it is possible for foreign workers to enjoy the same treatment as Greek citizens as regards the third, fourth and fifth categories of compensation, provided that this is stipulated by a convention of the country of origin of the foreigner with Greece, concluded with the term of reciprocity.
- According to the third sub-paragraph, foreign workers enjoy the treatment of Greek citizens without restriction as to the implementation of the third, fourth and fifth categories of compensation where the relevant legislation of the country of origin provides, in the spirit of the provision of Article 5, in favour of foreign workers who are on its territory.
- The above provisions of the last century institutionalise discrimination against foreign workers who are entitled to compensation by reason of an accident at work which is not in accord with the prevailing principles at an international and national level

5. Greece attempted to eliminate the above discriminatory treatment by the Legislative Decree of 30/31 October 1935 (OJHR A' 508), by which International Labour Organisation (ILO) Convention No. 19 (1925) on the equivalence of foreign and indigenous workers as to compensation for accidents at work was ratified.

According to the first article of ILO Convention 19, every contracting party which ratifies this convention "undertakes to grant to the nationals of any other Member which shall have ratified the Convention, who suffer personal

injury due to industrial accidents happening in its territory, or to their dependants, the same treatment in respect of workmen's compensation as it grants to its own nationals". The same provision makes clear that this equality of terms shall be granted to foreign workers and their dependants "without any conditions as to residence".

6. In spite of the positive amendment of the legal regime of compensation achieved by the ratification of ILO Convention 19 by Greece, in practice the granting of the above compensation has remained problematic because in essence the reciprocity clause has been retained. The treatment of foreign workers is the same as that of Greek nationals insofar as the country of origin (nationality) of the foreign workers has ratified the above Convention. By October 2002, this Convention had been ratified by 120 member-countries of the ILO. A large number of countries continues to remain outside the legislative framework of ILO Convention 19, thus at the same time leaving without cover their citizens who work outside their territories. One of these countries is Albania, whose citizens constitute the majority of foreign workers in Greece.

7. It is regarded as desirable that Greece's discriminatory legislation to the detriment of foreign workers should be rescinded, for the following principal reasons:

A. By ratifying ILO Convention 19 in 1935, Greece in essence notified the international community of its intention to eliminate discrimination against foreign workers in cases of compensation for accidents at work. Consequently, the maintenance of the provisions of the Royal Decree of 24 July 1920 shows, to say the least, a contradictory attitude on the part of Greece towards the issue in question.
B. On its revision in 2001, the Greek Constitution expressly introduced into the Greek legal order and reinforced the principle of the

'constitutional welfare state' (new Article 25, para. 1 C.), which in essence had been introduced already by the Constitution of 1975 by Articles 21 – 25. The above principle, together with the rights of man as an individual and as a member of society "is under the guarantee of the State". This fundamental supra-legislative principle has been rendered specific in various constitutional provisions (such as those of Article 21, para. 6 (protection of the disabled) and of Article 22, para. 3 (collective labour agreements for civil servants and local government or other public law legal entities employees), in which a tendency is apparent on the part of the new Greek legal order to give emphasis and a substantive content to the protection of the social rights, in principle, of all those who are in the territory of the Greek state, without any discrimination whatsoever. At the same time, however, it should be stressed that the above new constitutional provisions have as a consequence the creation of new, particularly important, obligations on the Greek state, whose organs must "ensure the unhindered and effective exercise" of individual and social rights and of the principle of the "constitutional welfare state", in accordance with the new Article 25, para. 1 C.

C. The right of "every individual" to social security, including social insurances, is one of the fundamental economic – social rights which is specifically protected by the International Covenant on Economic, Social and Cultural Rights (Article 9, Law 1532/1985).[2] The International Labour Organisation in its Convention 102 'concerning minimum standards of social security' (Law 3251/1955) has made it absolutely clear that a part of the social security with which modern states must provide those working in their territory, without

[2] See also M. Scheinin, 'The right to social security' in: A. Eide *et al.* (ed.), *Economic, Social and Cultural Rights*, Dordrecht, etc., Martinus Nijhoff Publishers, 2nd ed., 2001, pp. 211 – 221, Articles 12 'the right to social security' and 19 'the right of migrant workers and their families to protection and assistance' of the European Social Charter (Law 1426/1984).

exception, are benefits by reason of accidents at work and occupational diseases (Part VI of ILO Convention 102). These benefits consist, *inter alia*, of medical care and compensation for the above reasons. ILO Convention 102 makes it clear in Article 68, para. 1 that non-national residents shall have the same rights as national residents "in respect of benefits or portions of benefits which are payable wholly or mainly out of public funds …". The above ILO Convention has been supplemented by ILO Convention 121 (1964) 'concerning benefits in the case of employment injury', which Greece has not yet ratified.

The equality of migrant workers and the members of their families with national residents in the enjoyment of social security has been safeguarded in an absolute manner in Article 27 of the International Convention of the UN on the Protection of the Rights of All Migrant Workers and Members of their Families (1990), which Greece has not yet signed. The same status of equality is also stipulated, in principle, by the provision of Article 18 of the European Convention on the Legal Status of Migrant Workers (1977), which was signed by Greece on 24 November 1977, but has not yet been ratified.

The unenviable position of many foreign workers in Greece has also been stressed by the Public Prosecutor of the Court of Cassation of Areios Pagos in his circular[3] of 31 October 2002 to the Heads of the Prosecutor's Offices of the Judges of Appeal and of the Prosecutors' Offices of the Judges of First Instance, in which he expressed his concern because "a host of violations of the rules of labour law [and by extension of Articles 2, para. 1 and 25, para. C.] is heard of every day, particularly to the detriment of foreign migrant workers". The Prosecutor of the Areios Pagos called upon the above Prosecutors to

[3] AP 2834/Circ. 4.

show “due strictness in preventing or suppressing phenomena which degrade man and are an insult to our democratic and civilised society”.

8. The NCHR therefore proposes:

A. The express abolition of discrimination against foreign workers and the rescinding of Article 5 of the Royal Decree of 24 July 1920 and of Law 551 of 31 December 1914/January 1915 on the compensation of the above persons for accidents at work, in accordance, *inter alia*, with Article 25, para. 1 C. and Article 9 of the International Covenant on Economic, Social and Cultural Rights (Law 1532/1985). The express rescinding of the above provisions is considered necessary because although Article 39, para. 1 of the law on aliens (2910/2001), as amended by Law 3013/2002, provides for the enjoyment by aliens in the country lawfully “of the same insurance rights as Greek nationals”, the provisions of the above items of legislation, as being more specific, could, erroneously and in spite of being contrary to the Constitution and the above International Covenant, which is of a supra-legislative character (Article 28, para. 1 C.), be applied by the administration or the courts in cases of compensation of foreign workers for accidents at work.

B. The ratification by Greece of ILO Convention 121 (1964) ‘concerning benefits in the case of employment injury and occupational diseases’ and the European Convention on the Legal Status of Migrant Workers (1977).

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