

HELLENIC REPUBLIC  
GREEK NATIONAL COMMISSION FOR HUMAN RIGHTS

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<p style="text-align:center"><b>Recommendations regarding Greece's Compliance with the Decisions of the European Committee of Social Rights in the Light of Collective Complaints which Have Been Examined by the Committee</b></p>
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**I. General Observations**

**A) *The Charter***

The European Social Charter is, in the economic and social field, the equivalent of the European Human Rights Convention, which enshrines civil and political rights. The Charter entered into force in 1965.<sup>1</sup> The original text of the Charter was supplemented in 1988<sup>2</sup> and was revised in depth in 1996.<sup>3</sup>

The Charter provides for: protection in workplaces, special protection in non-workplaces for vulnerable categories of persons, social protection for the whole population in workplaces and outside them.

A principal characteristic of the Charter is the rule according to which each contracting State, which ratifies it, is not obliged to accept all the rights which it contains. It is, however, under the obligation to accept a minimum number of fundamental social rights (article 20 of the Charter).

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<sup>1</sup> Greece ratified it by Law 1426/1984.

<sup>2</sup> Greece ratified it by Law 2595/1998.

<sup>3</sup> Greece has ratified the Protocol of amendment of the European Social Charter (Law 2422/1996), but has only signed (03.05.1996) the Revised Social Charter.

### ***B) Monitoring of Implementation through Reports***

The implementation of the Charter is monitored, mainly, through a mechanism which provides for the regular submission of State reports. The monitoring of the reports has been entrusted to the European Committee of Social Rights, which consists of independent experts, while two other organs of the Council of Europe, the Governmental Committee and the Committee of Ministers, play a very significant political role. A representative of the International Labour Organisation, the international employers' and employees' organisations and the trade unions, as well as certain non-governmental organisations, have a consultative role.

### ***C) Monitoring of Implementation through Collective Complaints***

The Additional Protocol to the European Social Charter, which provides for a mechanism of collective complaints entered into force on 1 July 1998. Its aim is to reduce the importance of the information which comes from governments through the mechanism of state reports, and to encourage the social partners of the Council of Europe (e.g., international employees' organisations) and certain non-government organisations to report violations of the Charter directly to the European Committee of Social Rights by submitting complaints. The Protocol is the first mechanism of collective complaints in the sphere of social rights. Greece has not so far recognised the right of Greek NGOs to lodge collective complaints.

### ***D) Procedure for the Examination of a Collective Complaint***

A collective complaint is examined initially by the European Committee of Social Rights, which, having pronounced on its admissibility, looks at explanations and information provided by the two sides. The Committee also

takes into account the comments and observations which other States -which have ratified the Protocol on collective complaints-, and the international employers' and employees' organisations -which have a special consultative role in accordance with the Charter- submit to it. The European Committee of Social Rights immediately afterwards prepares its report on the complaint lodged and forwards its conclusions as to whether the State concerned has violated the Charter or not.

If the conclusions of the report of the European Committee of Social Rights are negative, a resolution is adopted based on the report, and it addresses a recommendation to the State concerned aiming at the amendment of its legislation or practice. The State must provide the necessary information on the taking of compliance measures.

## **II. Complaints against Greece**

Of a total of twelve collective complaints, three have been lodged against Greece. The first complaint, 3/1998 (*European Federation of Employees in Public Services v. Greece*) had as its object articles 5 (the right to organise) and 6 (the right to bargain collectively) of the Social Charter in relation to those employed in the armed forces. The European Committee of Social Rights dismissed the complaint as inadmissible (13 October 1999) because Greece is not bound by articles 5 and 6 of the Charter.

The second complaint, 7/2000 (*International Federation of Human Rights Leagues v. Greece*) had as its object article 1, par. 2 of the Charter which prohibits forced labour and lays down precisely the following: "With a view to ensuring the effective exercise of the right to work, the Contracting Parties undertake: [...] 2. to protect effectively the right of the worker to earn his living in an occupation freely entered upon". The international NGO which lodged the complaint cited a series of Greek provisions which contravene the prohibition of forced labour:

a) Presidential Decree 17/1974 *re* ‘planning of emergency’, which provides for the mobilisation of the civilian population “in any unforeseen situation causing disruption of the country’s economy and society”;

b) Article 64 of Legislative Decree 1400/1973 ‘Status of Officers of the Armed Forces’, according to which career officers in the Greek army who have received several periods of training may be refused permission to resign their commissions for up to twenty-five years;

c) Articles 205, 207, par. 1, 208, 210, par. 1, and 222 of the Code of Public Maritime Law and article 4, par. 1 of Law 3276/1944 on collective agreements in the merchant navy, which provide for penal sanctions against seafarers who refuse to carry out their duties, even when the safety of the vessel and the lives and health of those on board are not endangered.

The position of the International Federation of Human Rights Leagues was also supported by the European Trade Union Federation.

The Greek Government committed itself in its written observations that the provisions in question would be amended so as not to contravene the prohibition on forced labour guaranteed by the European Social Charter.

The European Committee of Social Rights held unanimously that in all three cases there was a violation of the European Social Charter, and, more specifically, of article 1, par. 2, which prohibits forced labour. It recalled that the competent European organs long ago have called for the amendment of the Greek legislation:

1) The amendment of Presidential Decree 17/1974 has been repeatedly sought by the European Committee of Social Rights (Conclusions XI-1, p. 42; XII-1, p. 51; XIII-1, p. 47; XIV-1, p. 349; XV-1, p. 295);

2) The amendment of article 64 of Presidential Decree 1400/73 has been repeatedly sought by the European Committee of Social Rights (Conclusions XI-1, p. 43; XV-1, p. 294) and the Committee of Ministers of the Council of Europe, which has issued two Recommendations (Recommendation R ChS (93) 1, 07.09.1993 and Recommendation R ChS (95)4, 22.06.1995) and

two resolutions (Resolution ChS (97) 1, 15.01.1997 and Resolution ChS (99)2, 04.03.1999);

3) The amendment of articles 205, 207 (1), 208, 210 (1), and 222 of the Code of Public Maritime Law and of article 4, par. 1 of Law 3276/1944 has been repeatedly sought by the Committee of Ministers, which has issued two Recommendations (Recommendation R ChS (93) 1, 07.09.1993 and Recommendation R ChS (5)4, 22.06.1995) and two resolutions (Resolution ChS (97) 1, 15.01.1997 and Resolution ChS (99)2, 04.03.1999).

Finally, by a resolution regarding collective complaint 7/2000, the Committee of Ministers noted Greece's commitment to comply with the recommendations of the monitoring organs of the European Social Charter.<sup>4</sup> In its last regular report on Greece, the European Committee of Social Rights noted that the country had fully complied with the first recommendation.<sup>5</sup> As to the third recommendation, Greece has also taken the necessary legislative measures.<sup>6</sup> As to the second recommendation, no initiative of compliance has been noted.

The third complaint, 8/2000 (Quaker Council for European Affairs v. Greece) again referred to article 1, par. 2 of the Charter, which prohibits forced labour. The complainant argued that that the provisions of Law 2510/1997 which allows conscientious objectors to perform civilian service instead of military service, as well as their application in practice, are of a punitive nature focusing on: a) the administrative formalities for obtaining the status of conscientious objector, b) the length of civilian service and place of performance, c) the conditions in which civilian service is performed, and d) the sanctions which may apply to conscientious objectors. The positions of the Quaker Council for European Affairs on the penal effects of forfeiture of the

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<sup>4</sup> Resolution ChS (2001) 6, 05.04.2001.

<sup>5</sup> See Conclusions XVI- 1 (July 2002). Also, Communication of 15 November 2002 of the Ministry of Labour and Social Security to the NCHR (Ref. No. 262/26.11.2002).

<sup>6</sup> See communication of 15 November 2002 of the Ministry of Labour and Social Security to the NCHR (Ref. No. 262/26.11.2002).

right to alternative service was also supported by the European Trade Union Confederation.

The Greek Government denied that alternative service falls within the field of forced labour of article 1, par. 2 of the Charter, and, alternatively, maintained that the terms of fulfilment of alternative service are reasonable. The European Committee of Social Rights stressed, first of all, that the obligation of alternative service, instead of military service, does not fall within the prohibition of forced labour in the light of article 4, par. 3 (b) of the ECHR. It may, nonetheless, constitute a restriction on the "*the right of [each person] to earn his living in an occupation freely entered upon*". For this reason, the terms for the fulfilment of alternative service fall within the field of article 1, par. 2 of the Charter.

As to the substance of the matter, the European Committee of Social Rights held that the duration of alternative service is excessive and that this constitutes a violation of the European Social Charter. According to the Committee, the examination of the remaining issues was superfluous.

In its Resolution on complaint 8/2000,<sup>7</sup> the Committee of Ministers of the Council of Europe took into account the revision of the Constitution of 2001 and the reduction of alternative service (article 18, par. 3 of Law 2936/2001).<sup>8</sup> Nevertheless, the above initiatives were not deemed to be satisfactory, and so in its last regular report on Greece, the European Committee of Social Rights held that this country has not yet complied with its obligations under the European Social Charter.<sup>9</sup>

### **III. Recommendations**

The National Commission for Human Rights recommends:

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<sup>7</sup> Resolution ChS (2002) 3, 16.03.2002.

<sup>8</sup> See also NCHR, *Report 2001*, pp. 163 and 41.

<sup>9</sup> See Conclusions XVI-1 (July 2002).

(a) that Greece should recognise to national non-governmental organisations the right to lodge collective complaints before the European Committee of Social Rights;

(b) that article 64 of Presidential Decree 1400/73 be amended. The obligation of officers to remain in the armed forces after their graduation from training colleges may not exceed a period of time equal to the duration of their studies at these colleges;<sup>10</sup>

(c) that the alternative civil-social service be further reduced so that its duration is truly reasonable and that it should not be tantamount to a 'punishment'.<sup>11</sup>

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<sup>10</sup> Cf. the commitment to table a draft law to amend article 64 of Legislative Decree 1400/73 undertaken by the representative of the Greek Ministry of National Defence at the 101<sup>st</sup> Meeting of the Governmental Committee of the European Social Charter on 9-13 September 2002 in Strasbourg, as that is cited in the communication of the General Secretary of the Ministry of Labour and Social Security to the NCHR (Ref. No. 86/6.2.2003).

<sup>11</sup> Cf the proposals of the National Commission for Human Rights on the institution of alternative civil-social service (05.07.2001), *Report 2001*, p. 163.