HELLENIC REPUBLIC
NATIONAL COMMISSION FOR HUMAN RIGHTS

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Observations on Draft Law of Ministry of Labour and Social Affairs "On the Protection of Employment – Establishment of the Independent Authority 'Labor Inspectorate' – Ratification of the ILO Convention No. 190 on violence and harassment in the world of work – Ratification of the ILO Convention No. 187 on the Promotional Framework for Occupational Safety and Health at Work – Incorporation of Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers"*

Summary

The Greek National Commission for Human Rights (GNCHR), responding again with responsibility to the mandate assigned to it by its founding law as the National Human Rights Institution (NHRI) and the independent advisory body to the Greek State on matters pertaining to human rights protection, is monitoring matters related to the promotion and protection of individual and collective labour rights, as well as other relevant labour rights, such as the protection of dignity, health and safety of workers, in the context of *inter alia* adapting the Greek legislation to the international and European provisions on human rights protection. The GNCHR's aim is the elaboration and formulation of policy proposals and specific recommendations to the competent State Authorities, and in the present case, to the Ministry of Labour and Social Affairs, which will contribute effectively and in a timely manner to the *de facto* compliance of the Greek government with the international and European obligations assumed by Greece.

In view of the commentary on this Draft Law and in recognition of its role as a bridge builder between the State and Civil Society, the GNCHR organised, within its Sub-Commission for Social, Economic and Cultural Rights, a hearing of persons and bodies on the Draft Labour Law under consultation. During this hearing, which took place, with a significantly broad participation of bodies and experts, online, on the 25th of May 2021, important observations and recommendations were made, concerning *inter alia* the ratification of the ILO Convention No. 190 on Violence and harassment in the world of work and the incorporation of Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance.

The GNCHR notes, however, once again deeply concerned, that this Draft Law was not submitted to it in order to deliver timely opinion on it, as it should in the context of its institutional role.

Given the significance of the issues regulated by this Draft Law, the GNCHR, by promoting the adoption of a human rights based approach, putting people at the centre, is submitting specific observations and recommendations, while, at the same time, pointing out important issues concerning the law-making process. The GNCHR draws the State's attention to the need to assess the cumulative impact of the measures that have been taken both during the economic crisis as well as during the ongoing health pandemic crisis on labour rights.

* The present Summary of Observations is the concise version of the report entitled "Observations on Draft Law of Ministry of Labour and Social Affairs "On the Protection of Employment – Establishment of the Independent Authority 'Labor Inspectorate' – Ratification of the ILO Convention No. 190 on violence and harassment in the world of work – Ratification of the ILO Convention No. 187 on the Promotional Framework for Occupational Safety and Health at Work – Incorporation of Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers", adopted by the GNCHR Plenary on June 10, 2021. Rapporteurs: E. Varchalama, Second GNCHR Vice-President, Dr Katerina Charokopou, GNCHR Legal/Research Officer, Dr. R. Fragou, Coordinator/GNCHR Legal/Research Officer, Eva Tzavala, GNCHR Legal/Research Officer and Dr Antonis Veneris, GNCHR Legal/Research Officer.

In particular, as regards the law making process, the GNCHR points out that the cumulative regulation of more than one issues of paramount importance for the rights of workers, such as the long-awaited ratification of the ILO Convention No. 190 or the incorporation of Directive (EU) 2019/1158, in a single Draft Law, which in fact introduces significant reforms in the legal framework on the protection of employment, that interact and cumulatively limit the protection scope for employment at the individual and collective level, is negatively assessed. The GNCHR notes that this controversial law-making process has not only deteriorated over the last decade, but it now tends to be consolidated as a practice with permanent characteristics. In fact, this phenomenon is exacerbated by the fact that the present Draft Law, both during the public consultation process and during its submission to the Parliament, was not accompanied by an appropriate Explanatory Memorandum, as part of the Impact Report, that would contribute to the understanding and assessment of its content.

Moreover, the GNCHR notes with disappointment that, despite its repeated recommendations on the **need to effectively monitor and assess the impact of both the austerity measures and the restrictive measures taken to address the COVID-19 pandemic** on the enjoyment of human rights and especially on labour rights, the cumulative impact of these measures has never been assessed.

With regard to its more specific observations on the Draft Law, and in particular, on Parts I and II, the GNCHR **welcomes in principle the ratification of the ILO Convention No. 190 on Violence and harassment in the world of work**, expressing its belief that it will contribute to the prevention of such incidents, the punishment of perpetrators and especially the timely and proper protection of victims of violence and/or harassment, provided that it will not remain inactive and it will be accompanied by the appropriate implementation measures. However, the GNCHR **negatively assesses the way in which the ratification of the ILO Convention No. 190 is being attempted, as the submitted Draft raises serious concerns as regards the implementation measures**. The implementation of the ILO Convention No. 190 is expected to be difficult mainly due to its regression compared to the already existing national institutional framework, in view of its ambiguities, omissions and contradictions. At the same time, as regards the provisions introducing the definitions of the phenomena of violence and harassment at work, despite the improvement of the Draft submitted to the Parliament, the GNCHR notes with regret that **there remain plenty of issues of non-compliance with the existing framework, to the extent that the present Draft Law is not taking into account European law and the EU *acquis* in the field of violence and harassment in the world of work**. At the same time, the GNCHR emphasises the need for the ILO Recommendation R206 concerning the elimination of violence and harassment in the world of work to be employed for the interpretation and supplementation of the ILO Convention No. 190, as it encompasses the main implementation pillars of the ILO Convention No. 190. The GNCHR notes that it is required, among other things, that the protective institutional framework is properly formulated on the basis of the root causes of violent behaviors and acts.

In addition, as regards the scope of the ILO Convention No. 190 and notwithstanding that the scope was somewhat expanded in the Draft eventually introduced to the Parliament, the GNCHR finds that not all fields in which work is provided and which are mentioned in the ILO Convention No. 190 are covered. In particular, the following fall outside the ambit of the Draft Law: those who provide work under – real or not – self-employment conditions, the agricultural sector and seafaring workers. At the same time, given the lack of an Explanatory Memorandum, it is not clear at all what the phrase "informal economy", which was included in the Draft submitted to the Parliament, covers in terms of its legal scope, as it is neither defined in the Draft, nor is there a reference to any relevant definition thereof.

The scope also remains limited in terms of the employer's obligations, since the present Draft Law is limiting the obligation to adopt policies in order to prevent and eliminate violence and harassment at work, as well as the obligation to deal with internal complaints only to companies employing more than twenty (20) individuals. Given that Greek economy consists mainly of micro, small and medium-

sized enterprises, this criterion of twenty (20) employees is neither provided for in the ILO Convention No. 190, which clearly stipulates that all workers must be protected without discrimination, nor is it justified anywhere in the Draft Law.

In addition, the GNCHR placed particular emphasis on the **confusion caused by the present Draft Law with regard to the limits of the relative competences of the finally three (3) co-responsible Independent Authorities** – the Labor Inspectorate (SEPE), the Ombudsman and the National Transparency Authority – stressing that ambiguity and duplication of responsibilities are to the detriment of victims of violence and harassment, as well as of CSOs assisting them. To this end, the GNCHR recommended the clarification and complete rewording of the relevant provisions.

In Part III of the Draft Law, the GNCHR **welcomes the incorporation of Directive (EU) 2019/1158 *on work-life balance for parents and carers***, which forms part of the initiatives of the European Pillar of Social Rights aimed at strengthening the existing institutional framework. The GNCHR stresses that **the incorporation is peculiar in terms of legislative technique because the Directive's provisions' structure, numbering and wording are not followed, while they should be, and recommends that the repealed and amended provisions of national legislation are provided for in the incorporation draft text for reasons of legal certainty and good administration**. The GNCHR also suggests that the term «reconciliation», referring to the balance between work and life, be used as it stands more correctly than the term «balance».

Despite the fact that the new Directive lays down minimum human rights related to a) the newly introduced paternity leave, parental leave and carers' leave b) flexible working arrangements for workers who are parents or carers and c) the legal protection for those making use of these provisions, this is not sufficiently reflected in the national provisions that incorporate it. In this light, the GNCHR**, on the one hand, welcomes the expansion of the regulatory content of existing rights for working parents, such as the improvements related to parental leave, maternity leave, paternity leave and the six-month special maternity benefits, but, on the other hand, the GNCHR expresses its concern as to the potential risk of reducing the existing national level of human rights protection afforded to workers, as the benefits facilitating the work-life balance provided for working parents ultimately remain limited and appear in the form of leave**. Similarly, with regard to categories of "non-formal" workers falling within the scope of the Directive, the GNCHR stresses that the suggested provisions should be applied without discrimination to all categories of workers, while promoting equal opportunities and should not, under any circumstances, downgrade or diminish the national labour acquis.

More specifically, with regard to carers' leave, the GNCHR welcomes the new regulations, while, at the same time, pointing out certain omissions, such as the failure to provide for remuneration and the requirement of previous professional experience. With regard to parental leave, the GNCHR reiterates its dissatisfaction with the fact that Greece is among the Member States that do not provide for parental leave to parents of same-sex couples. The fact that self-employed parents are also excluded from this type of leave is again met with dissatisfaction.

Also, the GNCHR expresses its concern over the implementation of flexible arrangements as to employment terms for working parents, especially given that this is combined with a general flexibility as regards working time, which is promoted in other provisions of the same Draft Law. The GNCHR recommends to the competent Authorities to ensure the guarantees of transparency and objectivity, as well as the prohibition of discrimination against workers on grounds of exercising the aforementioned rights.

Finally, the GNCHR stresses, in Part III, **the importance of work-life balance for working parents who are charged with increased care responsibilities** (minor children, children with disabilities, elderly parents or relatives with disabilities etc.)

As regards Part IV, the GNCHR points out **the extension of permitted overtime work accompanied with an increase of the remuneration for illegal overtime hours, which could, in fact, be rendered inapplicable, especially given the extent of authorisation granted to the**

Secretary-General of Labour to increase permitted overtime work above the 150 hours limit, thus rendering the once illegal overtime work, legal. However, this regulation carries risks for workers, especially if one takes into account the possibility of arranging working time, which the employer can use in order to secure, through his agreement with workers, working time beyond legal hours, while evading illegal overtime hours. In addition, **another factor of particular importance in terms of endangering the workers' protection is the retreat of the to-date-existing collective dimension of labor agreement about working time, by granting the possibility for an individual agreement between the employer and the worker about working time**. Accordingly, the essential term concerning working time can now be regulated not by a collective, but by an individual employment contract, with the result that the implementation of the system of working time arrangement is now owned to the managerial prerogative of the employer.

The GNCHR also notes, as far as the law of termination of employment contracts is concerned, and in particular as to the nullity of dismissal, that the employer is absolved from the obligation of reinstatement and the obligation to pay arrears of wages, which is replaced by the payment of additional compensation. This measure will also affect the worker's insurance coverage, since, as opposed to what applies to arrears of wages, the dismissal compensation is not subject to social insurance contributions, but only to tax. **Given also the restrictive austerity regulations for the protection of employment, which are still in force, the GNCHR finds that the protection sphere for workers as regards dismissal is excessively affected by the strengthening of the managerial prerogative of employer with respect to the termination of employment contracts.** Moreover, the same provisions allow the employer, on the one hand, to correct the defects of the termination afterwards, resulting in considering the fulfillment of the requirements as a new termination, while the previous one is now considered ill-founded and, on the other hand, to nullify the repercussions of the nullity of dismissal and the consequent arrears of wages, rendering the lawsuit initiated by the worker even more obsolete.

With respect to the collaborative digital platforms, a field which needs to be further regulated in the context of labour law as well, the GNCHR expresses its concern as to the proper human rights protection of workers who are employed in the context of a dependent employment relationship, in view of the introduction of the negative presumption of non-existence of dependent employment relationship, given that the employee has the right, under his contract, to use subcontractors or substitutes, to provide its independent services to third parties, to determine himself the time for providing his services etc. Hence, the mere signing of a contract with the aforementioned content will generate a presumption to the detriment of the contract of dependent employment, according to which the worker, who is in fact providing dependent employment for a platform, is called upon to overturn it, by proving the true nature of his employment as dependent. Accordingly, the need to protect this category of workers requires the establishment of the presumption in favor of their dependent employment relationship.

The GNCHR welcomes the Draft Law provisions on the right to disconnect from work, while at the same time expressing its reservations as to its interaction with the concept of "on call teleworking", which, by virtue of its ambiguity, could possibly undermine the scope of the right to disconnect.

The GNCHR deems that the introduction of the Digital Employment Card is a step towards the right direction, as addressing the phenomena of undeclared work constitutes a legal and legitimate aim. Nonetheless, the implementation of this provision does not seem to benefit everyone, given that it can only be applied to specific industries and companies. Lastly, the processing of a large number of personal data concerning not only their presence, but also the habits of the workers, raises serious concerns.

Regarding the provisions on trade unions, the GNCHR expresses its reservations as to the necessity of registering trade unions to the General Register of Trade Unions of Worker, because such requirement, as an additional criterion for the exercise of constitutional rights, constitutes an interference, which is not sufficiently justified. In addition, the GNCHR is

submitting specific recommendations on the process and the general principles that should govern electronic voting, in order to, on the one hand, ensure the transparency and integrity of the procedure and, on the other hand, provide crucial guarantees of confidentiality and privacy protection for individuals.

The GNCHR notes that **the Draft Law introduces a disproportionate restriction on the right to strike**, while recalling that, under the current regime, the 24-hour notification is informal and can be performed in any way (meaning not in writing), provided that the trade union can prove that the employer has been timely notified, if the latter disputes it. The written notification of the employer, served by a bailiff, cannot be justified on grounds of public interest, as it nullifies the main feature of the strike, which is immediate exercise of the collective right, also in conjunction with the additional restriction imposed by the present Draft Law concerning the suspension of the right to strike until public debate process is completed.

Last but not least, the GNCHR, concerned whether the Hellenic Data Protection Authority has previously delivered its opinion, submits observations on the compatibility of the Draft Law provisions with the legal framework on Data Protection. In particular, the GNCHR observes that there are defects as regards both the provisions concerning the notification of remote working conditions and the regulations related to the monitoring of the worker's performance when remotely working. Moreover, with regard to ERGANI and the Digital Employment Card, the GNCHR finds that the Draft Law is not taking into account the fundamental provisions of the General Data Protection Regulation, such as the principle of the purpose of data processing, the principle of data minimisation and of storage limitation.

The Greek National Commission for Human Rights (GNCHR) is the independent advisory body to the Greek State and the National Institution on matters pertaining to human rights protection. It was established in accordance with the UN "Paris Principles" and is governed by Law 4780/2021. Individuals appointed by forty-two bodies (independent Authorities, universities of law and political science, trade unions, NGOs, political parties and ministries) participate in its operations.