

## ANESC MOOT COURT COMPETITION (2023)

### Draft Fictitious Case

Extract from an article published in the *Sunday Standard* (Plipest, Vichtery) on 12 November 2022:

“The government has had to deal in the last two years with unprecedented levels of applications for domestic work in the country from non-nationals. This influx is rather surprising on several counts. Firstly, because it is quite visible (according to the Ministry of Home Affairs and judging from the presence of jobseekers in affluent neighbourhoods of the capital). Secondly, because it involves a mixture of adults - men and women - and younger persons - usually teenage girls, some as young as 15/16 years of age, according to sources close to the government.

Most specialised media outlets - as well as the public opinion - attribute this influx to several connected factors:

- since 2021 the country has hosted the headquarters of a European Union agency (the Agency for the Promotion of European Investments and Large-scale Infrastructure) as well as the seat of the Pan-European Orthodox Academy, both of which employ high-level staff and are likely to see their media exposure increase in the coming years. This in turn has led a number of countries to send national representations to Plipest with a view to carrying out lobbying activities. However, these national representations do not have diplomatic status.
- A general trend of immigration of workers coming from countries of the European Union as well as from other European countries, for instance from Armenia and Bosnia-Herzegovina.
- Recent amendments, made in March 2020, to the Access to National Territory Act have simplified the procedure for obtaining residence and work permits in Vichtery, and reduced administrative fees. From now on, applications for both residence permits and work permits are to be handled simultaneously, in a single digital document, for a fee of EUR 180. Applications can be lodged electronically or with a consular post of Vichtery, if there is one in the country of origin. There is no requirement in domestic legislation that the grant of the single residence and work permits is dependent on the existence of an employment contract;
- Given the vitality of the country’s trade unions and the quality of their action, it is expected that they would defend the rights of foreign workers that join them without any delay. Collective bargaining between the government and trade unions, on issues of wages and working conditions - in the absence of any structured employers’ organisation, as is the case with respect to domestic work - would also take place;
- The existence of a statutory minimum wage in the country, to be respected in the absence of any collective agreement;

- The ratification of the European Social Charter in December 2021, and the government's stated intention to ratify the ILO International Convention on domestic workers; and
- the existence of civil society organisations who are very engaged with issues to do with equal rights and harassment at the workplace. This is demonstrated by several cases that have been brought to court in connection with national domestic workers, which have received broad media coverage.

However, in spite of this general context, the government is now being accused by an international non-governmental organisation (Domestic Workers International – DWI), based in Helsinki and known - notably in the Council of Europe - for its advocacy on the international scene. DWI has lodged a “collective complaint” against the government, in accordance with the procedure established by a Protocol connected to the European Social Charter. The government thought that by not authorising access to this procedure to national non-governmental organisations, they would avoid the risk of being criticised for their political action, characterised by economic liberalism tinged with social democracy - reflecting the political interests of the political parties forming the coalition in power.

In its complaint lodged with the European Committee of Social Rights, based in Strasbourg and set up in accordance with the European Social Charter to monitor the implementation in the States Parties, DWI criticises the law and practice of Vichery on the following grounds:

1° Several allegations of violations of articles of the Charter pointing to the lack of effective inspections by the social inspectorate of the working conditions of foreign domestic employees - in particular regarding wages, working time (trade unions have reported situations where employees had been asked to work up to 60 hours per week by their employers), rest time (the general practice being allegedly of two Sundays off each month and 15 days' break during the summer period), social protection, and the health and safety of foreign domestic employees, as well as several aspects of forced labour at the home of some employers (confiscation of identity papers; compulsory accommodation in the employer's home, refusal that they join a union, refusal that they open a bank account, etc.). According to DWI, the government should not cite the Social Inspectorate's lack of existing legal powers to enter the homes of employers as a justification for not improving the working conditions of domestic workers and preventing instances of forced labour - both problems have been detailed in the press and legal commentary in the country;

2° National **non-governmental** organisations dealing with social rights have also provided DWI with reports documenting different types of harassment at work, i.e. at the home of domestic workers' employers, the lack of any legislation giving effect to the protection provided by the Social Charter being probably a contributing factor;

3° The lack of employers' organisations representing employers of domestic workers prevents the effectiveness of collective bargaining, even though the government claim that such bargaining is possible if trade unions request it. DWI argues that collective

bargaining as provided for by law is not reliable. According to DWI, a law that would entrust a joint committee with broader competence than domestic work (e.g. non-profit economy) with collective bargaining would be preferable, provided the requesting trade unions are representative in accordance with the criteria laid down in law.

Before deciding on the merits of the collective complaint, the European Committee of Social Rights will have to rule on its admissibility. Trade unions expect that the complaint will be considered admissible because clear factual evidence can be provided in support of the different grounds of the complaint, which have been reported for a long while. A lawyer specialised in social rights, consulted by the newspaper, underlines that “the Committee will have to check during this initial examination of the case whether the complaint is sufficiently substantiated with respect to the European Social Charter before the Committee proceeds to the merits.”

---