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South Korea: Constitutional Court ruling leaves migrant workers vulnerable to human rights abuses

Amnesty International is deeply disappointed by South Korea's Constitutional Court decision that restrictions on labour mobility for migrant workers do not violate the rights to freedom of occupation and right to work under the Constitution.

Where as in 2007, the Constitutional Court recognized that migrant workers had the same rights to work as South Korean nationals, under article 32 of the Constitution.

The Constitutional Court ruled on Thursday that restricting migrant workers to three changes of workplace within a work permit issued under the Employment Permit System (EPS) did not violate their freedom of occupation.

It has been well documented that these and other restrictions on labour mobility within the EPS, including workers being tied to their employers, and the greater freedom of employers to terminate such contracts, increase migrant worker's dependency on employers and their vulnerability to discrimination, exploitation and abuse. These concerns have repeatedly been raised in relation to South Korea by the ILO as well as the UN Committee on Economic Social and Cultural Rights.

Under the EPS, migrant workers are only permitted to change jobs up to three times and with employer permission. The inability to change jobs freely severely hinders migrant workers from raising issues of late or non-payment of wages or benefits, inadequate safety measures, and physical or sexual violence. In order to ensure continued employment, they are more likely than South Korean workers to put up with poor working conditions, abuse and exploitation.

Requiring employer's consent before migrant workers can move to another job places disproportionate power in the hands of employers. As a result, migrants cannot in practice withdraw their labour from their employer without losing their legal status, thus risking arrest, imprisonment and deportation.

When employers refuse to release migrant workers, some find conditions so unbearable that they have no choice but to leave and become irregular workers.

Amnesty International urges the South Korean authorities to amend the EPS Act to remove restrictions on the number of times migrant workers can change jobs, to remove the requirement for employer's permission to change jobs and to remove the time limit or allow greater flexibility for migrant workers to find new employment.

ENDS/

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