COUNCIL OF EUROPE CONSEIL DE L'EUROPE

European Social Charter (revised)

European Committee of Social Rights

Conclusions 2006 (Albania)

Articles 1, 5, 6, 7, 19 and 20 of the Revised Charter

Introduction

The function of the European Committee of Social Rights is to judge the conformity of national law and practice with the European Social Charter. In respect of national reports, it adopts "conclusions" and in respect of collective complaints, it adopts "decisions".

A presentation of this treaty as well as general comments formulated by the Committee figure in the General Introduction to the Conclusions[1].

The Revised European Social Charter was ratified by Albania on 14 November 2002. The time limit for submitting the 1st report on the application of this treaty to the Council of Europe was 30 June 2005 (reference period: 1 January 2003 to 31 December 2004) and Albania submitted it on 19 July 2005.

This report concerned the rights forming part of the "hard core" provisions of the Revised Charter:

– Article 1 (right to work),
– Article 5 (right to organise),
– Article 6 (right to bargain collectively),
– Article 7 (the right of children and young persons to protection),
– Article 12 (right to social security),
– Article 13 (right to social assistance),
– Article 16 (rights of the family)
– Article 19 (rights of migrants),
– Article 20 (right of women and men to equal opportunities).

Albania has accepted all these articles with the exception of Articles 12, 13 and 16.

The present chapter on Albania contains 31 conclusions[2]:

– 0 cases of conformity;
– 3 cases of non-conformity: Articles 6§3, 6§4, 7§10.

In respect of the other 28 cases, that is Articles 1§1, 1§2, 1§3, 5, 6§1, 6§2, 7§1, 7§2, 7§3, 7§4, 7§5, 7§6, 7§7, 7§8, 7§9, 19§1, 19§2, 19§3, 19§4, 19§5, 19§6, 19§7, 19§8, 19§9, 19§10, 19§11, 19§12, 20, the Committee needs further information in order to assess the situation. It asks the Albanian Government to communicate the answers to these questions before the 30 June 2007.

The next Albanian report will concern all other rights guaranteed by the Revised European Social Charter. It concerns the reference period 1 January 2003 – 31 December 2004.

The report should be submitted to the Council of Europe before 31 March 2006.

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[1] The conclusions as well as states reports can be consulted on the Council of Europe's Internet site (www.coe.int) under Human Rights.

[2] The 31 conclusions correspond to the paragraphs of the articles forming the hard core accepted by Albania, with the exception of Article 1§4, which is examined with Articles 9, 10 and 15 due to the links between these provisions.

Article 1 – Right to work

Paragraph 1 – Policy of full employment

The Committee takes note of the information provided in Albania's report.

Employment situation

GDP grew from 4.4 % in 2002 to 6 % in 2003, which was much higher than the EU average for this period (0.9 % in 2003). Inflation fell from 5.2 % to 2.4 % but rose to 3.4 % in 2004. Despite progress in economic stabilization, Albania still faces problems with a large trade deficit, corruption, organized crime, deficient law implementation and administrative inefficiency[1].

The report states that the social and economic transformations in the early 1990s led to a substantial increase of unemployment: at the end of 1992 the unemployment rate reached 26 %. It remained high during the reference period even though the trend was downward: 15.8 % (172,000 persons) in 2002, 15.2 % (163,000 persons) and 14.6 % (157,000 persons) at the end of 2004. It is to be noted that as Albania does not conduct labour force surveys, the unemployment rate relates to registered unemployed, which does not reflect accurately the real unemployment level. According to Eurostat, the employment rate was 47.4 % in 2001 and 2002.

The female unemployment rate (18.2 %) was much higher than for men (12.9 %), especially in urban areas. According to the report, this is due to the difficulties women face in adapting to the new labour market conditions. The report acknowledges that the rate of long-term unemployment (93.1 in 2002, 91 % in 2003 and 66 % in 2004) is very high. The Committee observes that it is far above the EU average (41 % in 2003). Moreover, in view of the fact that the time-limit on the entitlement to unemployment benefit expires after one year, a large number of persons were not registered as unemployed. Nevertheless, the Committee notes that the long-term unemployment rate fell significantly in 2004 and it would like to know the reasons for this drop.

The unemployment rate (at 26.8 % in 2002 according to Eurostat) of young people (aged 15-24) also remains a problem. The report explains that youth unemployment is the result of the rapid increase in population growth and the lack of new job opportunities in the public sector.

There are significant regional differences in unemployment rates: 13.4 % in the central area and 13.6 % in the southern area up to 25.8 % in the northern area. The Committee would like to know the reasons for these differences.

The Committee requests that the next report include information with regard to unemployment rate of people with disabilities and immigrants and among ethnic minorities.

Employment policy

The Committee takes note from the report that some laws and by-laws dealing with employment issues have been recently enacted including, *inter alia*, the 1995 Act on Employment Promotion, the 2002 Act on Vocational Education and Training and the Council of Ministers' decision of 8 September 2003 on Employment Promotion Programme for the Unemployed Female Jobseekers. The Act on Employment Promotion of 1995, which is the main legal instrument in this area, aims at formulating employment policies and programmes.

The report states that the Strategy for the Social and Economic Development (NSSED) and the Strategy on Employment and Vocational Training have been designed to fight poverty and increase the level of employment. The active policies provided for by these strategies include:

- employment services
- programmes of job creation
- professional counselling
- remedy and vocational training programmes

The report gives details of four employment promotion programmes:

- employment promotion programs for unemployed jobseekers – offering certain benefits for employers who employ unemployed jobseekers
- employment promotion programs for unemployed jobseekers through vocational training – giving financial support for the employers who carry out vocational training and employ certain number of the trainees for a certain period

[1] Commission of European Communities – Albania; Stabilisation and Association Report 2004; {COM(2004) 203 final}

– employment promotion programs through vocational training – providing training to jobseekers in the employment offices
– employment promotion programs for female unemployed jobseekers – subsidising a part of compulsory social contributions

As regards passive measures, the report refers to the unemployment allowance program which aims to compensate the unemployed and to provide active support to persons in receipt of unemployment benefits. The Committee asks for clarification as to what is meant by "active support".

The Committee asks that the next report reply to the following questions:

– What is the total number of participants broken down by programme?
– What is the average number of participants in active measures compared with the average number of unemployed persons (activation rate)?
– What is the average duration of the period from time a person is registered as unemployed until he/she receives an offer of participation in an active measure?
– In view of the serious long-term unemployment problem, what are the measures targeted specifically at the long-term unemployed (how many persons in this category received activation offers, what were the effects, etc)?

The Committee wishes to receive information on the effects of the various measures in terms of creating lasting employment for the participants.

The Committee finally requests that the next report indicate total expenditure on employment policy as a share of GDP, broken down by active and passive measures.

Conclusion

Pending receipt of the information requested, the Committee defers its conclusion.

Paragraph 2 – Freely undertaken work (non-discrimination, prohibition of forced labour, other aspects)

The Committee notes the information provided in Albania's report.

1. Prohibition of discrimination in employment

The Committee considers that under Article 1§2 legislation should prohibit discrimination in employment at least on grounds of race, ethnic origin, religion, disability, age, sexual orientation and political opinion.

Legislation should cover both direct and indirect discrimination. As regards indirect discrimination, the Committee recalls that Article E of the Revised Charter prohibits: "all forms of indirect discrimination. Such indirect discrimination may arise by failing to take due and positive account of all relevant differences or by failing to take adequate steps to ensure that the rights and collective advantages that are open to all are genuinely accessible by and to all" (Autism Europe v. France, Collective Complaint No. 13/2000, decision on the merits of 4 November 2003, §52).

Article 9 of the Albanian Labour Code prohibits discrimination in employment on grounds of race, colour of skin, sex age, religion, political beliefs, nationality, social origin, family relations or physical and mental disabilities. Differences, distinctions, exclusions or preferences required by a particular occupation are not considered to constitute discrimination.

Article 115 of the Albanian Labour Code provides for equal pay for men and women.

A breach of the non-discrimination principle as laid down in Article 9 of the Labour Code is punishable by a fine amounting to 50 times the monthly minimum wage (Article 202 of the Labour Code). Article 201 of the Labour Code provides for damages to be paid to employees whose rights have been violated.

The Committee recalls that in order to enable effective access to justice there must be a shift of the burden of proof in discrimination cases.

Further the Committee recalls that under Article 1§2 of the Revised Charter remedies available to victims of discrimination must be adequate, proportionate and dissuasive. It therefore considers that the imposition of predefined upper limits to compensation that may be awarded not to be in conformity with the Revised Charter as in certain cases that may preclude damages from being awarded which are commensurate with the loss and damage actually sustained and may not be sufficiently dissuasive for the employer.

In order to assess the situation the Committee needs the following further information :

– whether discrimination on grounds of sexual orientation is prohibited;
– information on exemptions to the rules which are permitted for genuine occupational requirements, examples of the occupations concerned;
– how the concept of discrimination both direct and indirect has been interpreted by the courts,
– how discrimination on grounds of age has been interpreted;
– whether, in respect of discrimination on grounds of disability the requirement of 'reasonable accommodation' has been adopted.
– the number of cases alleging discrimination brought before the courts, as well as the number of findings of discrimination
– information on the procedure to be followed in cases alleging discrimination, for example whether there a shift in the burden of proof?
– information on remedies i.e. reinstatement or damages that may be awarded to a victim of discrimination and confirmation that there are no pre defined limits to the amount of damages that may be awarded;
– information on the right of associations, organisations or other legal entities, which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring that equal treatment within the meaning of Article 1§2 of the Charter is respected, to obtain a ruling that the prohibition of discrimination has been violated in the employment context;
– information on a specific independent body to promote equal treatment.

The Committee considers that non-discrimination legislation can only be truly effective if it forms part of a broader strategy on equality and asks for information on measures taken to promote equality in employment.

As regards discrimination in employment on grounds of nationality the Committee recalls that under Article 1§2 of the Revised Charter while it is possible for states to make foreign nationals' access to employment on their territory subject to possession of a work permit, they cannot ban nationals of States Parties, in general, from occupying jobs for reasons other than those set out in Article G; restrictions on the rights guaranteed by the Revised Charter are admitted only if they are prescribed by law, serve a legitimate purpose and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health or morals.The only jobs from which foreigners may be banned therefore are those that are inherently connected with the protection of the public interest or national security and involve the exercise of public authority.

The Committee asks whether and if so, what categories of employment are closed to non-nationals.

2. Prohibition of forced or compulsory work

Article 8 of the Labour Code prohibits compulsory labour. The ban on forced labour does not apply to compulsory military service and requisitioning in times of war, natural disasters or other situations threatening the life of the community or to work imposed by a court as a punishment where the individual is not put at the disposal of private persons or enterprises.

The Committee considers these exceptions are compatible with Article 1§2 of the Revised Charter but asks whether there are other circumstances under Albanian law where workers may be required to undertake work without consent.

Prison work

The Committee recalls that under Article 1§2 of the Revised Charter, prison work must be strictly regulated in terms of pay working hours etc., particularly if prisoners are working in private enterprises. Prisoners may only be employed in private enterprises with their consent and under conditions as similar as possible to those normally associated with a private employment relationship.

The Committee seeks clarification as to whether prisoners may be employed in private enterprises and if so under what conditions.

The Committee refers to its question in the General Introduction to these Conclusions on this point.

3. Other aspects of the right to earn one's living in an occupation freely entered upon

Service to replace military service

The Committee notes from another source[1] that the length of alternative service is equal to the length of military service. The situation is in conformity with Article 1§2 in this respect.

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[1] The Right to Conscientious Objection in Europe, A review of the current situation Quaker Council for European Affairs 2005

Part time work

The Committee recalls that in order to be in conformity with Article 1§2 of the Revised Charter, part time work must be accompanied by adequate legal safeguards. In particular there must be rules to prevent non-declared work through overtime, and rules to ensure equal pay, in all its aspects between part time and full time workers.

The Committee asks for information on this issue.

Other

The Committee refers to its question in the General Introduction to these Conclusions as to whether legislation against terrorism precludes persons from taking up certain employment.

4. Conclusion

Pending receipt of the information requested the Committee defers its conclusion.

Paragraph 3 – Free placement services

The Committee takes note of the information provided in Albania's report.

The Employment Promotion Act of 1995 provides the legal basis for the system of employment services. The National Employment Service (NES), which is responsible for the implementation of labour market policies, was set up in 1998 in accordance with the Council of Ministers' Decision No. 42. The NES has 12 regional employment offices, 24 local employment offices and a number of vocational training offices.

The report states that the employment offices currently provide services for 163,000 unemployed jobseekers (15 % of the active labour population). These services include: mediation for unemployed jobseekers, collecting information on vacant jobs, providing vocational training and carrying out an analysis of labour market developments. Since there is no computerised system, the services for clients are performed manually. The report confirms that employment services are free of charge.

The NES has a total staff of 373 employees of which 45 persons are working for the Directorate General and 328 persons are employed in the regional and local employment offices. The report qualifies nearly 82 % of the staff as "specialists". According to the report, job centres published almost 14,400 vacancies in 2004. In view of the fact that, in relation to the large number of unemployed persons, the employment offices seem to be understaffed; the Committee would like to know whether there are any plans to increase the number of the staff working for the public employment service.

The Committee further notes that a few private employment agencies have been licensed to operate on the market, pursuant to Council of Ministers' Decision no. 708. The management and supervision of the private agencies are regulated by the Ministerial Instruction No. 612 of 29 March 2004. The Government admits that the co-ordination of public and private employment services is unsatisfactory. The Committee asks what measures are taken to improve the situation.

The Committee requests that next report indicates the placement rate, i.e. the ratio of placements made by employment services to the number of registered vacancies. The Committee would also like to receive information on the length of time it takes to fill vacancies, on the total number of people who found employment through the public employment service and on the market share of the public employment services (e.g. number of placements as a share of all hirings in the labour market). Furthermore, in view of the serious issue of long-term unemployment in Albania, the Committee asks that the next report explain what special measures the public employment service is taking to deal with this problem.

Pending receipt of the information requested, the Committee defers its conclusion.

Article 5 – Right to organise

The Committee takes note of the information provided in Albania's report.

Forming trade unions and employer associations

Article 46 of the Constitution grants everyone the right to organise collectively for any lawful purpose. Organisations and associations must be registered according to procedures laid down by law. The law prohibits organisations and associations whose activities are unconstitutional. Under Article 50 of the Constitution, employees have the right to associate freely in trade unions to defend their occupational and employment interests.

The rules and procedures governing the establishment of trade unions are set out in Chapter XVI of the Labour Code, and these also apply to central and local public officials. The founding documents and statutes/constitution of any employment organisation must be signed by at least five founding members in the case of employers' organisations and twenty founding members in the case of trade unions. The statutes must specify the name of the organisation, its main office, its purpose, the conditions governing admission, resignation and exclusion of members, their rights and responsibilities, the composition and duties of the governing body and its term of office, membership of any federations or confederations and the procedure for dissolving the union or organisation. The organisation's governing body decides on the level of contributions (Article 177). In order to obtain legal personality, trade unions, federations and confederations must deposit their founding documents and statutes with the Tirana Court. Legal personality is granted within 60 days of depositing these documents (Article 178). A copy of the statutes must be lodged with the Ministry of Labour (Article 180). Trade unions and employers' organisations are empowered to form federations or confederations and to affiliate to international employers' organisations (Article 176).

Freedom to join or not to join a trade union

Freedom to join or not to join a union is embodied in Article 146 of the Labour Code. According to this provision, there are no restrictions on the right of any category of employees to join a trade union. Furthermore, this provision also makes it illegal for employers to dismiss staff because of membership or non-membership of a union. In such cases employers must pay compensation equivalent to a year's pay, in addition to the wages or salary due for the period of notice.

The report indicates that there are no recorded cases of employees being required to belong to a union but there are ones of employer pressure not to join unions. In such cases, under Article 202 of the Labour Code employers are liable to a fine of 30 to 50 times the minimum monthly wage. The national labour inspectorate oversees the application of this legislation and imposes fines and other penalties. The Committee asks how many violations have been recorded in practice and how many penalties have been imposed.

The Committee asks whether closed shop agreements exist in practice.*Trade union activities*

Article 181 of the Labour Code requires employers to provide the necessary facilities to enable elected union representatives to carry out their duties properly. Representatives must be allowed to enter work places, take part in union activities, collect union dues, hold meetings and distribute documents.

Trade unions are free to determine their own organisation and activities, in compliance with existing legislation. Trade union representatives may not be discriminated against. It is unlawful for an employer to terminate a union representative's employment contract without the consent of the union, unless the employee is in breach of the law or of his or her collective or individual employment contract, or the employer can show that the termination of the contract is absolutely essential for the economic well-being of the enterprise. The Committee asks whether there are forms of direct or indirect discrimination against employees and whether domestic legislation provides for adequate compensation proportionate to the detriment suffered.

Representativeness

Article 200 of the Labour Code sets out the criteria for appointing the most representative trade unions to the National Council of Labour (NCL):

– number of members;
– number of collective agreements concluded and the number of employees covered by these agreements;
– number of branches, occupations and/or geographical organisations;
– ability to become involved in negotiating collective agreements and to settle disputes through mediation;
– membership of international organisations.

The following criteria apply to the appointment of employers' organisations to the NCL:

– number of affiliated enterprises;
– number of employees in these enterprises;
– number of branches, occupations and/or geographical organisations;
– ability to become involved in negotiating collective agreements and to settle disputes through mediation;
– membership of international organisations.

The Committee asks which are the most representative trade unions and employers organisations within the NCL.

Article 163 of the Labour Code authorises employers or employers' organisations to refuse to sign collective agreements if the conditions for representativeness of employees or employee associations are not met.

The procedure for recognising the most representative trade unions is laid down in Article 164. If unions are refused recognition of their representativeness they must submit evidence of it to the relevant employers or employers' organisations, at their own cost. This should take the form of a notarised certificate attesting to the size of the organisation's membership. The organisation that can show it has the largest number of members in an enterprise or branch must be considered the most representative organisation. If several trade union groupings are presented, the one with the most members is considered the most representative.

If employers, employers' organisations or trade unions wish to challenge a notarised certificate, they must lodge a complaint with the district or national conciliation office, depending on the geographical area concerned. The conciliation office considers the evidence and decides which union or unions are representative, within two weeks of the date of referral. If a union or employer challenges the conciliation office decision, it is entitled to request a secret ballot within two weeks of the announcement of the decision. The voting procedure is governed by a Council of Ministers decision. The Committee asks what organisation can be asked by an employer or employers' organisation to organise a vote to challenge a conciliation office decision and whether trade unions are informed of this vote.

Decisions to consider trade unions representative may not be challenged within two years of the conciliation office decision.

Scope ratione personae

Members of the armed forces are prevented by law from forming trade unions. The Committee asks whether members of the police are entitled to establish trade unions.

Under the legislation on the status of public officials, the latter are authorised to form trade unions or professional organisations and to take part in the decision making process. It is unlawful for senior government officials exercising decision making powers to form employee professional organisations. The Committee asks what category of senior officials is affected by this ban and why they are not allowed to establish trade unions.

According to the report, it is not illegal for foreigners lawfully residing or working regularly in Albania to become members of trade unions or hold administrative or management posts in a union.

Conclusion

Pending receipt of the information requested, the Committee defers its conclusion.

Article 6 – Right to collective bargaining

Paragraph 1 – Joint consultation

The Committee takes note of the information provided in Albania's report.

Joint consultation at national level

Joint consultation at national level takes place within the National Council of Labour (NCL), a tripartite body consisting of representatives of employers' and employees' organisations and the Government.

1. Composition of the NCL

The composition and responsibilities of the NCL are regulated in Section 200 of the Labour Code. Each of the employers' and employees' organisations are represented by ten members and appoint ten alternate members whereas the Government has the right to delegate seven members and to appoint seven alternate members. The alternate members replace the members at sessions of the NCL if the members are unable to attend. The functioning of the NCL is regulated by a Decision of the Council of Ministers.

The composition of the NCL is reviewed every three years and only delegates of the most representative employers' and employees' organisations are appointed as its members by the Minister of Labour and Social Affairs and may participate in its negotiations. The Council of Ministers decides which are the most representative organisations in this respect. The Committee notes that with respect to trade unions this decision relies upon criteria such as, *inter alia*, the number of members of the trade union, the number of collective agreements concluded by it and the number of workers covered by these agreements, the number of sectors, professions and territorial organisations covered as well as membership in international trade union organisations. As far as employers' organisations are concerned, the criteria comprise, *inter alia*, the number of employers covered by the organisation, the number of employees working with these employers, the number of sectors, professions and territorial organisations covered as well as membership in international employers' organisations.

The Committee recalls in this respect that in order to render the participation of trade unions in the various procedures of consultation efficacious, it is open to States parties to require them to meet an obligation of representativeness subject to certain general conditions. With respect to Article 6§1 of the Revised Charter, any requirement of representativeness must not excessively limit the possibility of trade unions to participate effectively in the consultations. In order to be in conformity with Article 6§1 of the Revised Charter, the criteria of representativeness should be prescribed by law, be objective and reasonable and subject to judicial review which offers appropriate protection against arbitrary refusal. In order to be able to assess whether the abovementioned representativeness criteria are in conformity with the said requirements, the Committee wishes the next report to provide details on how they are applied in practice and which are the trade unions allowed to participate in the deliberations of the NCL. The Committee wishes in particular to know what are the possibilities for judicial review or review by an independent body of a decision by the Council of Ministers and/or the Minister of Labour and Social Affairs in this respect. In this context it wishes the next report to clarify whether the review procedure regarding the determination of representativeness as described in the context of collective bargaining under Article 6§2 of the Revised Charter applies accordingly.

2. Subject Matters treated by the NCL

The NCL examines issues of common interest for the social partners and the consultations within that forum concern in particular the preparation and implementation of labour legislation, the discussion of national policies on employment including matters regarding vocational training and qualification, protection of employees, hygiene, technical safety, production, wellbeing as well as the application of ILO norms.

According to the report, since its establishment in 1996 the NCL has held approximately 2-3 meetings per year. The report makes reference to a number of recommendations issued by the NCL on amendments to the Labour Code and on matters of employment policy and further mentions a number of agreements that could be reached between the Government and the social partners as a result of their cooperation within the NCL. However, the Committee notes that most of the agreements mentioned refer to agreements reached between the Government and trade union confederations and not to agreements and consultations between the Government and both of the social partners. It wishes the next report to provide further information on activities of the NCL providing for joint consultation between the Government, employers and employees on matters of mutual interest. The Committee further notes that there are attempts to improve the organisational and functional structure of the NCL and wishes to be informed on any development in this respect.

Joint consultation at regional level

As far as social dialogue at the regional level is concerned, the report refers to the tripartite Conciliation Offices established at national level as well as in every district. The Conciliation Offices consist of a chairman being a Government representative and two members of each of the most representative employers' and employees' organisations. The Committee notes that the role of the Conciliation Offices is to assist in the settlement of collective conflicts between employees and employers rather than to provide a forum for joint consultation on matters of mutual interest as required under Article 6§1. The report further refers to joint consultation within tripartite regional councils without providing further details on the composition and activities of these bodies.

The Committee wishes the next report to provide further information on the possibilities of joint consultation at national, regional sectoral and enterprise level. Moreover, the Committee asks for information whether employers' and employees' organisations have themselves the opportunity for joint consultation on a bi-partite basis.

Finally, the Committee wishes to know whether the above described bodies also provide a forum for joint consultation in the public sector including the civil service or whether there are specific consultative or representative bodies in this sector and if so what is their structure and how do they operate.

Conclusion

Pending receipt of the information requested, the Committee defers its conclusion.

Paragraph 2 – Negotiation procedures

The Committee takes note of the information provided in Albania's report.

Collective bargaining procedures are governed by Sections 159 et seq. of the Labour Code.

Pursuant to these provisions, collective agreements may be concluded between one or more employers or employers' organisations on the one side and one or more trade unions on the other. Collective agreements contain regulations governing the relations between the contracting parties. Any terms of collective agreements that are less favourable to employees than those prescribed by law are invalid. Collective agreements may be entered into on enterprise or branch level.

Pursuant to Section 163 of the Labour Code, a representative trade union may submit a written request with an employer or an employer's organisation to start negotiations on the conclusion, renewal or amendment of a collective agreement at enterprise, sectoral or industry level. Several trade unions may jointly exercise this right. This written request is made public by the employer in the enterprise or sector concerned within two weeks following its receipt. In the event the representativeness of a trade union is challenged by the respective employer or employer's organisation, any concerned organisation of employees should submit evidence of its representativeness to the employer or employer's organisation by means of a notarial certificate confirming the number of members of the union. The trade union proving that it comprises the largest number of members at the respective level to which the collective agreement shall refer (enterprise, sectoral or industry level) shall be considered as the most representative in this respect. If several trade unions are presented together, the group of the organisations which has the greatest number of members, shall be considered to be the most representative.

The Committee recalls that in order to render the participation in the various procedures of collective bargaining efficacious, it is open to States parties to require them to meet an obligation of representativeness subject to certain general conditions. With respect to Article 6§2 of the Revised Charter, any requirement of representativeness must not excessively limit the possibility of trade unions to participate effectively in collective bargaining. The Committee wants to receive further information on how representativeness of a single trade union or in the event several trade unions are represented together, a group of trade unions, is determined. It wishes in particular to know what are the applicable rules and which trade union prevails if several trade unions submit a request to bargain collectively but do not act jointly. It further wishes to know what are the safeguards to ensure that the trade unions entitled to bargain collectively are independent from the employer's side.

In the event the employer's organisation or the trade union concerned object to the numbers as stated in the notarial certificate supposed to prove that the trade union is the most representative, they may lodge a complaint with the competent Conciliation Office which decides within two weeks following submission of the complaint on the trade union's representativeness. If the employer or the employee side do not accept the decision of the Conciliation Office they have the right to seek the organisation of a secret ballot within two weeks following the announcement of the Conciliation Office's decision. It is not clear from the provisions of

the Labour Code who is entitled to participate in such ballot. The Committee asks the next report to clarify this point.

In the event the respective employer or employer's organisation does not object to the representativeness of the trade union requesting the opening of collective negotiations or in the event its representativeness has been definitely established, the employer or employer's organisation must receive the representatives of the trade union and start negotiations within two weeks following publication of the request for negotiations or the final decision on the representativeness of the trade union.

The Committee understands from the report that the Government can not impose its presence in the negotiations between workers' and employers' organisations.

It further notes from Section 162 of the Labour Code that the Minister of Labour may extend a collective agreement that covers at least half of the employers in a sector to the residual employers active in the sector. The extension procedure is regulated by Decision of the Council of Ministers. The Committee wishes the next report to provide further details on this procedure and asks in particular who is entitled to submit a request for extension and whether any representativeness criteria have to be met in this respect.

The report provides an overview of collective agreements concluded during the reference period in the private and public sector as well as their coverage level within the sector concerned. The Committee wishes the next report to provide updated information on collective agreements concluded in the private and public sector at enterprise, sectoral and national level and on the number of employers and employees covered by these agreements. It also asks how many of the total number of employers and employees in Albania are covered by collective agreements.

Finally, the Committee wishes the next report to clarify whether the abovementioned rules on collective bargaining procedures also apply to the public sector or what other regulations allow a participation of employees in the public sector in the determination of their working conditions.

Pending receipt of the information requested, the Committee defers its conclusion.

Paragraph 3 – Conciliation and arbitration

The Committee takes note of the information provided in Albania's report.

Section 188 of the Labour Code defines collective conflicts as any conflict beween several employees or one or several trade unions on the one side and one or several employers or one or several organisations of employers on the other.

According to Section 165 of the Labour Code, in the event the parties involved in collective negotiations regarding the conclusion, renewal or amendment of a collective agreement fail to reach an agreement within 30 days of negotiations, they may have recourse to mediation, the Conciliation Office and/or the Court of Arbitration with the view to reach a settlement of the dispute.

Article 192 of the Labour Code stipulates that a request for mediation may be submitted by any concerned party to a collective conflict with the Minister of Labour and Social Affairs or the State Labour Inspectorate. In this event, the mediator, who is appointed by the Minister of Labour and Social Affairs, shall intervene immediately to assist the parties in finding a solution. The participation of both parties in the mediation procedure is obligatory even if it was initiated upon the request of one party only. The duration of the mediation procedure may not exceed ten days. If mediation fails, the Minister of Labour and Social Affairs submits the dispute to the relevant Conciliation Office which may summon any of the concerned parties and request data and information necessary for the examination of the case. The parties are obliged to be present at the debates of the Conciliation Office. The reconciliation procedure has a maximum duration of up to 20 days and closes with a proposal for settlement of the conflict by the Conciliation Office.

The Committee notes from Section 192 (3) and 193 (7) of the Labour Code that participation in the mediation and reconciliation procedure is obligatory for both parties even if the procedures were initiated upon the request of one party only. However, it understands from the report that neither the dispute resolution proposal made by the mediator nor by the Conciliation Office are binding upon the parties without their consent and wishes the next report to confirm that this understanding is correct.

If reconciliation has failed, the parties may jointly bring the case before the Court of Arbitration pursuant to Section 194 of the Labour Code. The report explicitly states that none of the parties to a collective conflict may have recourse to arbitration without the consent of the other party and that neither the Government nor any other institution may refer a dispute to arbitration against the will of the parties. If the parties jointly opt for arbitration they may jointly appoint one or three arbitrators. They may ask the Ministry of Labour and Social Affairs to provide them with a list of arbitrators set up for that purpose. The arbitration decision is a binding

and enforceable title in accordance with the corresponding regulations of the Code of Civil Procedure. The arbitration procedure may take up to a maximum of three weeks following submission of the request for arbitration by the parties.

The only exception to the principle of voluntary arbitration is stipulated in Article 196 of the Labour Code stating that in the event collective conflicts concern services of vital importance and following unsuccessful mediation and reconciliation attempts, a compulsory arbitration procedure closing with a binding decision of a Court of Arbitration shall resolve the dispute. The Court of Arbitration competent in this respect consists of arbitrators chosen by the parties, or, failing agreement between the parties, by the Minister of Labour and Social Affairs upon request of one of the parties. The services categorised as being of vital importance in this respect are listed in Section 197/5 of the Labour Code and comprise "indispensable medical and hospital services, water supply services, electricity supply services, air traffic control services, services of protection from fire as well as services at prisons". The Committee also notes that strikes affecting these services are unlawful and prohibited.

The Committee recalls that any form of compulsory recourse to arbitration without the agreement of one or both parties to the dispute is a restriction to the right to bargain collectively which can only be in conformity with Article 6§3 of the Revised Charter if such restriction falls within the limits of Article G of the Revised Charter, i.e. where the compulsory recourse to arbitration is prescribed by law, serves a legitimate purpose and is necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health, or morals. The Committee notes that in the case at hand, compulsory arbitration terminates collective bargaining even before recourse to a strike can be made and that it does not serve the purpose to end a strike in the above sectors which e.g. had lasted so long as to jeopardize the rights and freedoms of others or public health etc.

The Committee refers in this respect to its assessment regarding the restrictions of the right to strike of employees in the above services under Article 6§4 of the Revised Charter and considers that to the extent it had held the ban on strike not to be in conformity with Article 6§4 of the Revised Charter, the recourse to compulsory arbitration would likewise not fall within the limits of Article G of the Revised Charter and constitute a restriction of the right to bargain collectively which is not in conformity with Article 6§3 of the Revised Charter. Referring to its reasoning under Article 6§4 of the Revised Charter, the Committee therefore considers that the situation is not in conformity with Article 6§3 of the Revised Charter since the circumstances under which recourse to compulsory arbitration is permitted go beyond the limits set out in Article G of the Revised Charter.

The Committee further notes from the report that the mediation and reconciliation procedures stipulated in the Labour Code are also applicable to employees in public sector institutions. However, it appears that this is not the case for employees of ministries and central and local state administration authorities to which special reconciliation procedures as set out in Law No. 8549 on the Status of the Civil Servants and related laws apply. The report states in this respect that the Civil Service Commission, being an independent administrative body the members of which are nominated by Parliament, is responsible to decide on complaints lodged by civil servants. The Committee wishes the next report to provide further information on mediation and conciliation procedures for the resolution of conflicts which may arise between the public administration and its employees.

The Committee concludes that the situation in Albania is not in conformity with Article 6§3 of the Revised Charter on the ground that the circumstances in which recourse to compulsory arbitration is authorised go beyond the limits set out in Article G of the Revised Charter.

Paragraph 4 – Collective action

The Committee takes note of the information provided in Albania's report.

Meaning of collective action

Article 51 of the Constitution guarantees the right of employees to strike in connection with labour relations and specifies that limitations of the right to strike may be established by law with respect to particular categories of workers in order to assure essential social services. Article 47 of the Constitution further guarantees the freedom of peaceful assembly. The conditions and procedures regarding the exercise of the right to strike are stipulated in the Labour Code.

The Committee wishes the next report to provide information whether employers have the right to lock-out and if so what are the conditions under which this right might be exercised.

Permitted objectives of collective action

Pursuant to Section 197 of the Labour Code, trade unions are entitled to exercise the right to strike for the purpose of solving their economic and social demands in compliance with the rules set out in the Labour Code. Participation in strikes is voluntary and any discrimination of workers due to their participation in a strike or their refusal to participate in a strike is prohibited. In the course of a strike the parties are required to make efforts to negotiate with a view to reach an agreement.

Trade unions are entitled to persuade workers by peaceful means to participate in a strike provided that the right to work of workers who do not wish to participate is not affected thereby. Employers are prohibited from replacing employees participating in a strike with other workers not already being employees at the time the strike was called.

The Committee concludes these rules to be in conformity with Article 6§4 of the Revised Charter.

Who is entitled to take collective action?

According to Section 197/1 of the Labour Code, only trade unions have the right to organise and call a strike.

The Committee refers to the description of collective bargaining procedures in its conclusion with respect to Article 6§2 of the Revised Charter and asks whether only the trade union having the largest number of members at enterprise, sectoral or industry level may call a strike. The Committee recalls that such a requirement amounts to a restriction of the right to collective action which is not in conformity with Article 6§4 of the Revised Charter (Conclusions XV-1, pp. 254-257). Meanwhile it reserves its position on this point.

Restrictions on the right to take collective action

i. Restrictions *ratione personae*

The Committee notes that the Law No. 8549 on the Status of Civil Servants prohibits civil servants from calling a strike or participating in a strike. The Committee recalls that in the light of Article G of the Revised Charter – which permits restrictions to the right to strike if they are prescribed by law and pursue a legitimate purpose and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health or morals – the right to strike of civil servants may be restricted to the extent they perform duties affecting public interest or national security. However a denial of the right to strike to civil servants as a whole cannot be deemed to be in conformity with the Charter (Conclusions I, p. 39; see also Conclusions III, p. 37). It therefore considers the situation in Albania not to be in conformity with Article 6§4 of the Revised Charter in this regard.

Section 197/5 of the Labour Code prohibits strikes in sectors of vital importance, where the interruption of work would jeopardize the life, personal security, or the health of a part or of the entire population such as in the event of “indispensable medical and hospital services, water supply services, electricity supply services, air traffic control services, services of protection from fire as well as services at prisons”. As already described in the conclusion regarding Article 6§3 of the Revised Charter, in these cases compulsory arbitration is the sole means to settle a collective conflict.

The Committee recalls that denying the right to strike to certain categories of employees or in certain sectors is only in conformity with Article 6§4 of the Revised Charter if it falls within the limits of Article G of the Revised Charter as stated above. The Committee notes that the first condition is met, since the strike ban is prescribed by law.

With regard to the prohibition of strikes in electricity and water supply services, the Committee considers that such a ban could serve a legitimate purpose since work stoppages in these areas, which are essential to the life of the community, could create a threat to the lives of others or to public health. However, simply prohibiting all employees in these services, even though essential, from striking cannot be considered proportionate to the requirements of these sectors, and therefore necessary in a democratic society. At most, the introduction of a minimum service requirement in these sectors might be considered in conformity with Article 6§4. The Committee therefore considers that in this regard the situation in Albania is not in conformity with Article 6§4 of the Revised Charter.

The Committee further considers that a strike ban with respect to air traffic control, fire protection and prison services could serve a legitimate purpose since work stoppages in these sectors could pose threats to public order and national security. However simply prohibiting all employees in these sectors from striking, without any distinction as to their function, cannot be considered proportionate, and therefore necessary in a democratic society. In order to be able to assess the situation, the Committee wishes to know whether the strike ban extends to all employees in these sectors or only to staff essential for maintaining necessary services. Meanwhile, it reserves its position on this point.

As far as the strike ban in indispensable medical and hospital services is concerned, the Committee considers the restriction of the right to strike to be within the scope of Article G of the Revised Charter.

ii. Restrictions *ratione temporis*

According to Section 169 of the Labour Code, the parties to a collective agreement shall not initiate collective action regarding the issues regulated by a still valid collective agreement. However, according to the said provision this peace obligation is only absolute if the parties have explicitly agreed to it. The Committee thus understands that a peace obligation is only valid if it reflects with certainty the will of the social partners and considers the situation to be in conformity with Article 6§4 of the Revised Charter in this respect. However, it asks what "absolute" peace obligation means in this context and what are the applicable rules if not both parties have explicitly agreed to be bound by a peace obligation.

Under Section 197/4 of the Labour Code, strikes are prohibited or may be suspended under particular circumstances and for as long as these circumstances continue to prevail, such as in the event of natural catastrophes, state of war, where the freedom of elections is put at stake and during other extraordinary situations. In order to be able to assess whether these restrictions fall within the limits of Article G of the Revised Charter the Committee wishes the next report to clarify the scope of the above circumstances and in particular of the terms "extraordinary situations" and "situation where the freedom of elections is put at stake".

iii. Essential services

Pursuant to Article 197/6 strikes are prohibited if they would prevent the provision of minimum services in sectors satisfying basic needs of the population. The trade unions concerned must ensure that the workers required to operate the essential machinery and equipment are available for rendering these services during a strike. The relevant workers are assigned jointly by the employer and the trade union concerned or, if no agreement can be reached between the parties on their number and identity, by binding decision of an arbitrator appointed by the Minister of Labour and Social Affairs in consultation with the parties concerned.

In order to be able to assess whether these restrictions to the right to strike fall within the limits of Article G of the Revised Charter and are in conformity with Article 6§4 of the Revised Charter, the Committee asks for information in the next report on what are the criteria used to determine whether it is a minimum service that has to be introduced and what would be its scope, what are the sectors concerned and who is responsible to decide on their necessity and scope.

Procedural requirements pertaining to collective action

Section 165 of the Labour Code stipulates that in the event collective negotiations between the parties have not led to an agreement after a period of 30 days, the trade union involved is only entitled to call a strike after the parties have had recourse to mediation and the Conciliation Office.

The Committee recalls in this connection that the requirement to exhaust conciliation and mediation procedures before a strike can be called is in conformity with Article 6§4 of the Revised Charter as long as such machinery is not so slow that the deterrent effect of a strike is affected. It noted already in its conclusion regarding Article 6§3 of the Revised Charter that the mediation procedure may take up to ten days and the reconciliation procedure up to 20 days, i.e. the time elapsing before a strike can be called following failure of negotiations may amount to a total of another 30 days. The Committee asks whether this is the maximum duration of a conciliation procedure to be carried out before a strike can be called. It further asks whether the law permits a strike only where conciliation procedures have failed or if a strike may still proceed where there is a merely partial resolution of the dispute. Meanwhile, it reserves its position on this point.

Consequences of collective action

Section 197/8 of the Labour Code states that during the duration of a strike the obligations and rights resulting from the employment contract, including the right to salary, shall be suspended, except for the statutory rights of employees regarding social assistance and occupational accidents and diseases. Dismissal from work due to participation in a lawful strike is invalid. In the event of an unlawful strike, the employer may terminate the employment relations with the workers participating in the strike with immediate effect should the worker concerned not have resumed work within three days. In that case the employer may demand payment of damages from the workers concerned or the trade union that was involved in the strike. The Committee wishes the next report to clarify, what authority decides on the lawfulness of a strike, whether dismissal is only possible after the employer has notified the workers and/or the trade unions of the unlawfulness of the strike and requested the worker concerned to resume work and when the aforementioned three days time period starts to run.

Conclusion

The Committee concludes that the situation in Albania is not in conformity with Article 6§4 of the Revised Charter on the following grounds:

– civil servants are denied the right to strike;
– employees in electricity and water supply services are generally denied the right to strike.

Article 7 – Right of children and young persons to protection

Paragraph 1 – Prohibition of employment under the age of 15

The Committee notes the information provided in Albania's report.

Under Article 98 of the Labour Code, the minimum age of admission to employment is 16, which is the earliest age at which a person may leave school (Section 8 of the Pre-University System Act No. 7952 of 26 January 1995, as amended in 1998). The Committee asks that the next report confirm whether this prohibition applies to agricultural work, family enterprises and private households. It also wishes to know whether it covers all forms of economic activity irrespective of the status of the worker (employee, self-employed, unpaid helper or other).

Article 98 does allow some exceptions, however: young people aged between 14 and 16 may be employed during the school holidays in light work, provided it is not harmful to their health or development. This rule is implemented by Council of Ministers decision No. 384 of 20 May 1996 on child labour. Under the said decision, employers wishing to employ children must obtain prior approval from the Labour Inspectorate. The Committee asks for detailed information on the definition of light work to be included in the next report.

The Committee notes Council of Ministers decision No. 205 of 20 May 1996 on the employment of under-18s in cultural, artistic, sport and advertising activities. Under the aforementioned decision, such employment is likewise subject to prior approval by the Labour Inspectorate. The Committee wishes to know the precise rules as regards these activities.

The Committee wishes to emphasise that in order for the right set out in Article 7§1 to be guaranteed, effective application of the relevant legislation must be ensured. The National Labour Inspectorate Act No. 7986 of 13 September 1995, as amended in 1998 and 2002, instructs the said inspectorate to monitor the implementation of the labour legislation. The Committee asks the next report to contain observations on the activities carried out by the National Labour Inspectorate as regards the supervision of the minimum age of admission to employment and the arrangements governing light work (number of inspections, breaches found, penalties imposed).

The report also states that the transition to the new system led to an unbalanced population movement, which generally resulted in people converging on Albania's large cities. This led to high unemployment rates, as a result of which some children and adolescents under the age of eighteen were forced to work in the underground economy in order to earn money and secure a basic standard of living. The Committee asks how many young workers are entirely lawfully employed, how many are estimated to be employed in the underground economy, what the sources of this information are and what the outcome has been of the measures taken to prevent and put a stop to illegal employment of young workers.

The Committee invites the Government to reply to the question regarding home work which figures in the general introduction.

Pending receipt of the information requested, the Committee defers its conclusion.

Paragraph 2 – Prohibition of employment under the age of 18 – for dangerous activities

The Committee notes the information provided in Albania's report.

The Committee takes note of the list of occupations regarded as dangerous or unhealthy. In the absence of other information, it asks the next report to:

- indicate the legislation in which the relevant tasks are listed;
- confirm that the prohibition covers young people under the age of 18;
- indicate whether and in what circumstances the prohibition on dangerous or unhealthy work may be waived. The Committee recalls that it interprets such derogations in keeping with the Appendix to Article 7§2 which states that states party may provide in their legislation that young persons not having reached the minimum age laid down may perform work in so far as it is absolutely necessary for their vocational training where such work is carried out in accordance with conditions prescribed by the competent authority and measures are taken to protect the health and safety of these young persons;
- contain information on the monitoring activities carried out by the Labour Inspectorate in this field.

Pending receipt of the information requested, the Committee defers its conclusion.

Paragraph 3 – Prohibition of employment of children subject to compulsory education

The Committee notes the information provided in Albania's report.

The Committee notes that the light work (examined in its conclusion concerning Article 7§1) may be performed only during the school holidays. The Committee asks that the next report confirm that such work may not be performed outside the school holiday period, i.e. not before or after class or at the weekend.

To enable it assess the situation concerning Article 7§3 of the Revised Charter, which requires time worked to be limited so as not to interfere with children's school attendance, receptiveness and homework, the Committee asks what daily working hours are permitted during the school year.

In order to assess the situation with regard to Article 7§3 of the Revised Charter, the Committee wishes to know the number of hours that may be worked per day both during the holidays and in the course of the school year. It also asks whether work is prohibited for a period of at least four weeks during the summer holidays and whether it is prohibited to work for half of each holiday period in the course of the school year.

The Committee also requests that the next report contain information on the existing arrangements as regards cultural, artistic, sport and advertising activities, as governed by Council of Ministers decision No. 205 of 20 May 1996.

Pending receipt of the information requested, the Committee defers its conclusion.

Paragraph 4 – Length of working time

The Committee takes note of the information provided in Albania's report.

The Committee reminds that with a view to ensuring the effective exercise of the right of children and young persons to protection, the States undertake, through the acceptance of Article 7§4, to limit the working hours of persons under 18 years of age in accordance with the needs of their development, and particularly with their need for vocational training. This limitation may be the result of legislation, regulations, contracts or practice. The Committee wishes to be informed about working hours of young people under 18 years.

It asks whether all the young workers are sufficiently covered by provisions prescribed by legislation, collective agreements or other measures. If not, it asks for:

– data on the proportion of young workers who are not covered;
– the reasons why some young workers are not covered;
– information on any special measures for young workers whose working hours are not limited.

The Committee asks what measures have been taken to apply the relevant laws and regulations in practice and whether the measures described apply to all categories of young workers. It asks the government to provide an estimate of the proportion of adolescents who are not covered and state which categories they belong to.

Pending receipt of the information requested, the Committee defers its conclusion.

Paragraph 5 – Fair pay

The Committee takes note of the information provided in Albania's report.

Under Act no. 7961 of 12 July 1995, salaries may be no lower than the minimum wage set by a Council of Ministers decision. The last such decision, taken on 25 June 2004, set the minimum national wage at 10,800 Albanian Lek (ALL; 87 €) a month. Under Article 111 of the Labour Code, the Council can set a lower minimum wage in order to promote and facilitate young people's access to the labour market. However, no such decision has been adopted.

The national minimum wage also applies to young workers and so there is no difference between the minimum wage of young workers and that of adults. The Council of Ministers increases the minimum wage every year, generally raising it by more than the inflation rate. For instance, in 2004, when the average inflation rate was 2.2 %, the minimum wage was increased by 7.3 %. In 2005, it is planned to increase the minimum wage by more than 10 %.

The report does not include any figures regarding the level of young workers' wages and the sums paid to apprentices.

The Committee would point out that under Article 7§5 of the Revised Charter, wages that are 30 % lower than adult workers' starting or minimum wage are acceptable in the case of young workers aged 15-16 and that a 20 % difference is acceptable in the case of young workers aged 16-18. It asks for clear information on the situation in the next report.

Pending receipt of the information requested, the Committee defers its conclusion.

Paragraph 6 – Time spent on vocational training

The Committee notes that no information is provided in Albania's report on this provision.

It asks the government which provisions of the legislation or collective agreements specify that time spent by young persons in vocational training during normal working hours with the consent of the employer shall be treated as part of the working day and, in so far as possible, how much time young persons are granted for this purpose. It would also like to know whether they are paid for time spent in vocational training and, if so, on what basis.

The Committee would like to know whether the measures described apply to all categories of young workers. If not, it would like the government to provide an estimate of the proportion of young workers not covered and specify the categories to which they belong. The Committee also wishes to know the reason why some workers are not covered and whether any special measures are taken on their behalf.

Lastly, the Committee asks what measures have been taken to apply the relevant laws and regulations in practice.

Pending receipt of the information requested, the Committee defers its conclusion.

Paragraph 7 – Paid annual holidays

The Committee takes note of the information provided in Albania's report.

Employees under 18 years of age are entitled to four weeks' annual holiday with pay. However, the law is not respected by all employers and so the national labour inspectorate applies penalties, including fines of up to fifty times the minimum wage. The Albanian government pays particular attention to this category of employee and, through the national labour inspectorate, attempts to ensure that the legislation protecting persons under eighteen years of age is respected.

The Committee reiterates that the right provided for in Article 7§7 implies that the young worker be entitled to take leave days "lost" to illness or accident at another time so as to benefit from the mandatory minimum period of four weeks per year (Conclusions 2004, France, Article 7§7, p. 225). It therefore asks whether young workers can waive their right to annual paid holiday and whether this holiday can be suspended in the event of illness or accident.

Pending receipt of the information requested, the Committee defers its conclusion.

Paragraph 8 – Prohibition of night work

The Committee takes note of the information in Albania's report.

Article 101 of the Labour Code prohibits night work for employees under 18 years of age.

The Committee asks whether there are exceptions to this prohibition and, if so, what form they take. It also asks whether this prohibition is fully applied in practice.

Pending receipt of the information requested, the Committee defers its conclusion.

Paragraph 9 – Regular medical examination

The Committee takes note of the information provided in Albania's report.

Under Article 103 of the Labour Code, young people under eighteen years of age may only be employed if a full medical examination confirms that they are fit to work. It is the Council of Ministers' task to adopt special regulations governing medical examination procedures but it has failed to adopt a special regulation to implement Article 103 of the Labour Code and therefore, in practice, there are no rules governing such check-ups.

Under Council of Ministers decision no. 594 of 22 December 1997, a medical check-up must be conducted on all employees every six months. Persons under 18 years of age are examined by the same service as adults.

The Committee recalls that, under Article 7§9 of the Revised Charter, States Parties must provide for compulsory regular medical examinations for workers under 18 years of age employed in occupations specified by national laws or regulations. These examinations must be adapted to the specific situation of young workers and the particular risks to which they are exposed (Conclusions 2004, Ireland, article 7§9, p. 290). The Committee asks if the six-month interval between check-ups is actually respected.

Pending receipt of the information requested, the Committee defers its conclusion.

Paragraph 10 – Protection against physical and moral dangers

The Committee takes note of the information provided in Albania's report.

Protection against sexual exploitation of children

In order to comply with Article 7§10, States must take specific measures to prohibit and combat all forms of sexual exploitation of children, in particular their involvement in the sex industry. This prohibition shall be accompanied with an adequate supervisory mechanism and sanctions.

An effective policy against commercial sexual exploitation of children should cover the following three primary and interrelated forms for sexual purposes: child prostitution, child pornography and trafficking of children. To implement such a policy, States should adopt legislation, which criminalizes all acts of sexual exploitation, and a national action plan combating the three forms of exploitation mentioned above.

Article 100 of the Criminal Code, provides that any sexual act with a minor who has not attained the age of fourteen years, or has not reached sexual maturity, is considered a criminal offence and punishable with up to 15 years of imprisonment. When the sexual act was non-consensual, or has resulted in death or suicide of the minor, it is punishable by a heavier penalty. The Criminal Code also provides for the criminal offences of forceful sexual intercourse with minors aged 14-18, or with physically or mentally disabled persons, including children aged 14-18 (Articles 101 and 103). Under the Criminal Code, serious immoral acts conducted with minors who have attained the age of fourteen years are considered criminal offences (Article 108).

Under the Criminal Code, the exploitative use of children in prostitution is considered a criminal offence. Soliciting prostitution, mediating or gaining from it is heavily punished. In light of the situation in Albania where minors are exploited for prostitution purposes through deceit, coercion, violence and close family, in-law and guardianship ties, the Criminal Code provisions on the exploitation of prostitution were changed by Law no. 8279, of 15 January 1998. The foregoing elements were also included in the aggravating circumstances concerning the crime of exploitation of prostitution. Exploitation of prostitution of a person who has been forced or coerced into exercising prostitution outside the territory of Albania is considered a criminal offence.

Furthermore, under the Criminal Code, the production, delivery, advertising, import, selling and publication of pornographic materials featuring minors constitutes a criminal offence. The Committee asks whether the possession of child pornography is considered a criminal offence and if not whether there are plans to include such a prohibition in the Criminal Code.

The Committee notes that the trafficking of children for the purposes of prostitution, for material profit or any other profit, is punishable by ten to twenty years of imprisonment (Article 128/b of the Criminal Code).

In January 2002 the Government of Albania approved a Country Strategy Against the Trafficking of Human Beings and more recently a National Strategy for Children. Both strategies are strengthen the partnership between the Government and NGOs.

The Committee notes from another source[1] that the National Strategy on Children aims to *inter alia* to combat the sexual exploitation of children. However, the necessary structures and financial and human resources have not been provided to allow for implementation of the national plan and that there is concern that the rather fragmented approach adopted by the Government may prove difficult to coordinate, causing overlap or gaps in certain areas. The Committee asks how the Government has ensured that adequate financial and human resources are provided for its implementation, as well as its monitoring and coordination mechanisms. The Committee furthermore asks whether the plan has been evaluated in which case it wishes to receive the results of this evaluation.

The Committee notes from several sources that the problem of sexual exploitation of children is considerable[2]. According to the International Organisation for Migration (IOM) Albanian remains a primary country of origin for trafficking in human beings, primarily for sexual exploitation , although a significant number of persons were trafficked for labour, begging and delinquency. In addition a number of victims are trafficked for multiple forms of exploitation. According to the IOM the number of victims of trafficking assisted in 2003 was 345 and in 2004 was 366, 294 in 2003 and 292 in 2004 specifically for sexual exploitation purposes[3]. However the IOM states that based on other estimates these numbers represent only a fraction those trafficked every year.

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[1] Concluding Observations of the UN Committee on the Rights of the Child on Albania, CRC/C/15/Add.249, 31 March 2005, in www.unhchr.org

[2] www.ecpat.net, IOM, International Organisation for Migration Second annual report on Victims of trafficking in South Eastern Europe 2005, Concluding Observations of the UN Committee on the Rights of the Child on Albania, CRC/C/15/Add.249, 31 March 2005,

[3] These data do not include Albanian victims of trafficking identified or assisted by NGOs or governmental social assistance programmes in transit and destination countries who have not been subsequently returned to Albania.

Minors accounted for a significant percentage of assisted victims trafficked for sexual exploitation; 21.1 % of assisted vicitms in 2003 and 23.6 % of vicitms assisted in 2004.

In light of the extent of the problem in Albania and the lack of evidence that the Government has taken sufficient measures, Committee concludes that the situation is not in conformity with Article 7§10 of the Revised Charter.

It asks that the next report provide information on the efforts taken in the areas of reducing and preventing the occurrence of sexual exploitation, sale of children and trafficking, including by strengthening legislation and sensitizing professionals and the general public to the problems of sexual abuse of children and trafficking through education, including media campaigns. It asks for information on the strengthening of existing cooperation with the authorities of countries to which children are trafficked in order to combat the phenomenon and harmonize legislation in this respect.

Protection of children against other forms of exploitation

Under Article 7§10 states must prohibit the use of children in other forms of exploitation following from trafficking or being on the street, such as, among others, domestic exploitation, begging, pick pocketing, servitude or the removal of organs, and shall take measures to prevent and assist street children.

The Committee notes that the trade of transplants, as well as any activity connected to the removal or the illegal implantation of the organs, is sentenced by imprisonment by 3 to 10 years (Article 89/a of the Criminal Code).

According to IOM[1] 100 % of assisted victims of trafficking for economic exploitation, begging and delinquency in 2003 were minors and 93.2 % in 2004. The Committee refers to its remarks above on the situation of trafficked minors and requests information on measures taken to address the situation.

The Committee notes from another source[2] that street children represent the most unprotected category of children in Albania. The Committee asks full information on this group of children in the next report. In particular it asks what measures have been taken to prevent and reduce this phenomenon in the best interests of these children, how are these children provided protection and assistance, such as health care, and whether there are any measures taken to strengthen the support and assistance available to families, both as a preventive measure and a measure conducive to the return of children to their families or other settings, as appropriate. Meanwhile, it reserves its position on this point.

Protection against the misuse of information technologies

Taking into consideration the spread of sexual exploitation of children through the means of new information technologies, Parties should under Article 7§10 adopt measures in law and in practice to protect children from their misuse.

The Committee asks whether there is legislation or codes of conduct used by Internet service providers is foreseen in order to protect children.

Conclusion

The Committee concludes that the situation in Albania is not in conformity with Article 7§10 of the Revised Charter on the grounds that the number of minors involved is still too high and that the measures adopted have proven insufficient and ineffective.

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[1] International Organisation for Migration Second annual report on Victims of trafficking in South Eastern Europe 2005

[2] Concluding Observations of the UN Committee on the Rights of the Child on Albania, CRC/C/15/Add.249, 31 March 2005, in www.unhchr.org

Article 19 – Right of migrant workers and their families to protection and assistance

Paragraph 1 – Assistance and information on migration

The Committee takes note of the information provided in Albania's report.

Free services to migrants are offered by the competent administrative units. At central and regional level, the Sector of Migration and Labour Relations provides services to migrants such as information on the legislation of the receiving countries, consultation on labour contracts, knowledge on tradition and culture of the employment country, information on institutions, information on where help may be asked or where training centres are. The information is available in English. A brochure will be made available for immigrants containing *inter alia* information on the procedures of the issuance of a work permit and for obtaining a residence permit for the self-employed. The Committee asks for the next report to provide more details as to information services provided to migrant workers and in the languages in which the information has been be made available.

According to Article 9 of the Law on the emigration of the Albanian citizens for employment purposes Nr. 9034, of 20 March 2003, it is punishable to spread false information and any unlawful information made for profitable purposes in the field of emigration. The Committee notes that Albanian legislation does not foresee other special measures to combat misleading propaganda relating to emigration and immigration. The Committee asks whether transit migrants, e.g. from neighbouring countries such a Greece and Italy are provided with information on the risks and consequences of illegal migration.

The Committee also asks for information as to which practical measures are taken to tackle racism and xenophobia as well as trafficking of women.

The Committee notes from another source[1] that there are allegations of ill-treatment by police of minority groups and asylum seekers and that there is a need for raising awareness of racism among the police. The Committee asks that the next report contain details on appropriate training regarding the fight against racism and xenophobia given to public servants who are in first contact with migrants.

Pending receipt of the information requested, the Committee defers its conclusion.

Paragraph 2 – Departure, journey and reception

The Committee takes note of the information provided in Albania's report.

The report states that information is available of interest for migrants, such as conditions of work, inclusion in the social protection system, and on courses on the receiving state provided in Albania before departure. A brochure will be made available for immigrants containing *inter alia* information on the procedures of the issuance of a work permit and for obtaining a residence permit for the self-employed. Emigrants will be able to register their departure at a central registry with the Regional or Local Employment Office.

The Committee notes that the Public Health Sanitary State Inspectorate organises the sanitary – and epidemic services along border checkpoints, which meet the World Health Organisation (WHO) International Sanitary Regulations. The Committee asks whether there are any other necessary health services provided to migrants in transit and reception facilities. In particular the Committee asks that the next report provide detailed information on the health services provided to transit migrants.

Pending receipt of the information requested, the Committee defers its conclusion.

Paragraph 3 – Co-operation between social services of emigration and immigration states

The Committee takes note of the information provided in Albania's report.

It notes that the Albania cooperates with the International Social Service (ISS) and the National Albanian Social Service cooperates with its counterparts in different countries. Cooperation between social services is also realised through diplomatic and consular channels. The Committee asks that the next report provide information regarding social service cooperation suited to the individual circumstances of migrant workers, in particular transit migrants from neighbouring countries such as Greece and Italy, whether through public or through private agencies, and any details on the type of information exchanged between the social services.

Pending receipt of the information requested, the Committee defers its conclusion.

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[1] ECRI (European Committee againts Racism and Intolerance) Third report, CRI (2005) 23, adopted on 17 December 2004, in www.coe.int/T/E/human_rights/ECRI .

Paragraph 4 – Equality regarding employment, right to organise and accommodation

The Committee takes note of the information provided in Albania's report.

Remuneration and other employment and working conditions

The report states that migrant workers enjoy equal rights and equal treatment with regard to the rights and responsibilities arising from labour relations.

The Committee recalls that States should prove the absence of discrimination, direct or indirect towards migrant workers, in terms of law and practice with regard to renumeration and other employment and working conditions or should inform of measures taken to remedy cases of discrimination. States should furthermore pursue a positive and continuous course of action providing for treatment not less favourable to migrant workers.

The Committee asks that the next report indicate any measures or programmes to promote equality of opportunity and treatment for migrant workers.

Membership of trade unions and enjoyment of the benefits of collective bargaining

The Committee recalls that States should secure for migrant workers treatment not less favourable than that of their own nationals in the area of trade union membership and enjoyment of benefits of collective bargaining. All legal and de facto discrimination concerning trade union membership and enjoyment of the benefits of collective bargaining, including access to administrative and managerial posts in trade unions for migrant workers, should be eliminated.

The Committee finds no information on this subject and asks that the next report shows that migrant workers are afforded treatment not less favourable in law and practice than that of Albanian nationals. It asks what the level of unionisation is for migrant workers. Finally, it asks any information on the assessment of the compliance with this article, through for example the activities of the Labour Inspectorate.

Accommodation

The Committee recalls that Article 19§4 obliges States to eliminate all legal and de facto discrimination concerning access to public and private housing for migrant workers. There must be no legal or de facto restrictions on inter alia subsidised housing. The Committee asks whether migrant workers and their families are guaranteed equal access to public and private housing.

Conclusion

Pending receipt of the information requested, the Committee defers it conclusion.

Paragraph 5 – Equality regarding taxes and contributions

The Committee takes note of the information provided in Albania's report.

The report states that employment legislation affords equal rights and equal treatment to foreigners working in Albania with regard to rights and responsibilities arising from the labour relations.

The Committee takes note of the information provided, however this information does not enable the Committee to make an assessment as to whether the right of migrant workers to equal treatment regarding the payment of employment taxes, dues or contributions is guaranteed.. It recalls that the right of migrant workers to equal treatment regarding the payment of employment taxes, dues or contributions should not only be guaranteed in law but also ensured in practice. Therefore the Committee requests precise information about the laws and regulations on this matter

Pending receipt of the information requested, the Committee defers its conclusion.

Paragraph 6 – Family reunion

The Committee recalls that Article 19§6 obliges States to allow the families of migrants legally established in their territory to join them. The worker's children entitled to family reunion are those who are unmarried and dependent on the migrant worker.

A state may not in principle deny entry to its territory for the purpose of family reunion to a family member of a migrant worker for health reasons (subject to Article G of the Revised Charter). Refusal may only be admitted for specific illnesses which are so serious as to endanger public health. These are the diseases requiring quarantine stipulated in the World Health Organisation's International Health Regulations of 1969, or other serious contagious or infectious diseases such as tuberculosis or syphilis. Very serious drug addiction or

mental illness may justify refusal of family reunion, but only where the authorities establish, on a case-by-case basis, that the illness or condition constitutes a threat to public order or security.

The Committee notes that Albania's report contains no information on Article 19§6. The Committee is therefore unable to reach a conclusion. It asks that the next report provide all the information necessary to assess the situation.

Pending receipt of the information requested, the Committee defers its conclusion.

Paragraph 7 – Equality regarding legal proceedings

The Committee takes note of the information provided in Albania's report.

The Committee notes that legal assistance and consultancy, such as the exclusion of paying court fees, is provided without discrimination to all migrant workers and their families. The Committee notes that the Constitution holds that there should be no distinction between foreigners and Albanian citizens. According to the report, migrant workers are given the same treatment as Albanian citizens, who do not have sufficient income to cover the costs of court practices. However, in order to assess the situation in full, the Committee asks that the next report provide information on the laws dealing with this issue or examples of case law.

Pending receipt of the information requested, the Committee defers its conclusion.

Paragraph 8 – Guarantees concerning deportation

The Committee recalls that Article 19§8 applies to migrant workers and his or her family members if these persons reside legally in the territory of the State. It obliges States to prohibit by law the expulsion of migrants lawfully residing in their territory, except where they are a threat to national security.

Expulsion for offences against public order or morality can only be in conformity with the Revised Charter if it constitutes a penalty for a criminal act, imposed by a court, or under judicial authority and is based not solely on the existence of a criminal conviction but on all aspects of the non-nationals' behaviour, as well as the circumstances and the length of time of his/her presence in the territory of the State. Risks to public health are not in themselves risks to public order and cannot constitute a ground for expulsion, unless the person refuses to undergo suitable treatment. Seeking social assistance is also not against public order and cannot constitute a ground for expulsion.

States must ensure that foreign nationals served with expulsion orders have a right of appeal to a court or other independent body, even in cases where national security, public order or morality are at stake.

Migrant worker's family members, who have joined him or her through family reunion, may not be expelled as a consequence of the migrant worker's expulsion, since these family members have an independent right to stay in the territory.

The Committee notes that Albania's report contains no information on Article 19§8. The Committee is therefore unable to reach a conclusion. It asks that the next report provide all the information necessary to assess the situation.

Pending receipt of the information requested, the Committee defers its conclusion.

Paragraph 9 – Transfer of earnings and savings

The Committee takes note of the information provided in Albania's report.

According to the report there are no limits on the amount of earnings or savings that may be transferred out of Albania by a migrant worker. The Committee finds the information in the report too brief to assess the situation in full. It therefore asks that the next report provide information on the applicable legislation.

Pending receipt of the information requested, the Committee defers the conclusion.

Paragraph 10 – Equal treatment for the self-employed

On the basis of the information contained in Albania's report, the Committee notes that there is no discrimination between migrant employees and self-employed migrants.

However, in the case of equal treatment between wage-earners and self-employed migrants and between self-employed migrants and self-employed nationals, a deferral under paragraphs 1 to 9, 11and/or 12 of Article 19 leads to a deferral under paragraph 10 since the same situation applies to self-employed workers.

In its conclusions under Article 19§§1, 2, 3, 4, 5, 6, 7, 8, 9, 11 and 12, the Committee has deferred its conclusions upon receipt of further information.

Accordingly, the Committee defers its conclusion under Article 19§10 of the Revised Charter.

Paragraph 11 – Teaching language of host state

In general terms, the Committee stresses that the teaching of the national language of the host country is one of the primary means of integrating migrant workers and their families into employment and society as a whole. It considers that Contracting Parties should facilitate the learning of the national language by (a) children of school age and (b) migrant workers themselves and members of their families who are no longer of school age.

In the first case, it should be stressed that the language of the host country is automatically taught to primary and secondary school students throughout the school curriculum but that this is not enough to satisfy the obligations laid down by Article 19§11. The Committee considers that states must make special effort to set up additional assistance for children of immigrants who have not attended primary school right from the beginning and who therefore may lag behind their fellow students who are nationals of the country.

In the second case, the Committee considers that the Revised Charter requires Contracting Parties to encourage the teaching of the national language in the work place, in the voluntary sector or in public establishments such as universities. It is essential that such services be free of charge so as not to exacerbate the disadvantaged position of migrant workers in the labour market.

The Committee takes note of the information provided in Albania's report.

According to the report the vast majority of resident migrants in Albania, have Albanian as their mother tongue. The Committee asks whether there are other migrants in Albania whose mother tongue is not Albanian.

Pending receipt of the information requested the Committee defers its conclusion.

Paragraph 12 – Teaching mother tongue of migrant

The Committee recalls that according to its case law, States must promote and facilitate the teaching in schools or other structures, such as voluntary associations, of those languages that are most represented among migrants within their territory. In practical terms, States should promote and facilitate the teaching of the mother tongue where there are a significant number of children of migrants who would follow such instruction.

The Committee takes note of the information provided in Albania's report.

According to the report the vast majority of resident migrants in Albania, have Albanian as their mother tongue. The Committee asks whether there are other migrants in Albania whose mother tongue is not Albanian.

Pending receipt of the information requested the Committee defers its conclusion.

Article 20 – Right to equal opportunities and treatment in employment and occupation without sex discrimination

The Committee takes note of the information provided in Albania's report.

Equal rights

The Labour Code, Article 9, prohibits discrimination in employment on the grounds of sex, where discrimination means any differentiation, exclusion or preference based on gender. Employment includes vocational guidance and education, recruitment, termination of contracts, and working conditions such as remuneration, social aid. However, the report also indicates that when differentiation, exclusion or preference are necessary for a particular job it is permitted, as well as special protection measures in collective agreement. The Committee asks the next report to explain what is meant by differential treatment, if it is interpreted as covering indirect discrimination, and for what occupations exceptions to the rules are permitted. Similarly, it asks the report to indicate what "special protection measures" may be included in collective agreements.

The report indicates that the Ministry may require the parties to rectify provisional collective agreements' clauses which violate legislation on non-discrimination. Once the collective agreement is in force, in cases of infringements of the legislative provisions, the State Labour Inspectorate notifies the parties of the violation and orders to the employer to apply the legislation in force.

Sanctions in case of infringement of Article 9 of the Labour Code consist of a fine of 30 times the minimum monthly wage. The victim may also ask for compensation. The court decides on the amount of the compensation to be awarded.

According to Article 144 of the Labour Code, the burden of the proof in case of termination of the contract lies with the employer

The Committee asks for more precise information on the available judicial remedies (competent jurisdiction, time limits, etc.) and compensation (reinstatement, criteria taken into consideration for the determination of compensation etc). It also asks whether the shifting of the burden of proof applies to all cases of discrimination in employment or only in the event of dismissal by the employer. Finally, it wishes to know whether the employees are protected against retaliatory measures following a complaint made with a view to ensure that equal treatment is respected.

The Committee asks whether there are any restrictions on women's access to employment in the police and armed forces.

Article 115 of the Labour Code provides for equal pay for jobs of equal value between women and men. The Committee asks information about the effectiveness of this right, as well as on measures taken to ensure it in practice. The Committee recalls that in the General Introduction to Conclusions 2002 on the Revised Charter it indicated that "since the right to equality under Article 20 covers remuneration, the Committee will no longer examine the national situation in this respect under Article 4§3 (right to equal pay). Consequently, States which have accepted both provisions, are no longer required to submit a report on the application of Article 4§3". The Committee therefore asks the next report on Article 20 to provide detailed information on how equal treatment is guaranteed in law and practice.

The Committee asks how gender equal treatment is guaranteed with respect to social security, in particular benefits related to employment.

Specific protection measures

Chapter X of the Labour Code prohibits the employment of women, in particular "pregnant women or young mothers", in certain activities regarded as particularly dangerous for their health. The activities in question are defined by the Council of Ministers.

With regard to specific protection measures related to pregnancy, labour and the post-natal period, the Committee will examine these under Article 8 of the Revised Charter (Conclusions 2007).

Position of women in employment and training

In 2003, unemployment rates were, respectively, 18.2 % for women and 12.9 % for men. The report does not provide any figures on the employment of women, including part-time employment. Similarly, it does not indicate the female participation rate in education and training, nor the gender pay gap. The Committee asks the next report to provide these figures.

Measures to promote equal opportunities

The report does not provide information on measures to promote equal opportunities. The Committee asks the next report to provide this information.

Conclusion

Pending the requested information, the Committee defers its conclusion.