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European Social Charter (revised)

European Committee of Social Rights

Conclusions 2011
(ALBANIA)

Articles 7, 8 and 19 of the Revised Charter

This text may be subject to editorial revision.

Introduction

The function of the European Committee of Social Rights is to rule on the conformity of the situation in States 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 statements of interpretation formulated by the Committee appear 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 6th report on the application of this treaty to the Council of Europe was 31 October 2010 and Albania submitted it on 1 November 2010. On 15 April 2011, a letter was addressed to the Government requesting supplementary information regarding Articles 8 and 19. The Government submitted its reply on 2 June 2010.

This report concerned the accepted provisions of the following articles belonging to the thematic group "Children, families and migrants":

- the right of children and young persons to protection (Article 7),
- the right of employed women to protection of maternity (Article 8),
- the right of the family to social, legal and economic protection (Article 16),
- the right of mothers and children to social and economic protection (Article 17),
- the right of migrant workers and their families to protection and assistance (Article 19),
- the right of workers with family responsibilities to equal opportunity and treatment (Article 27),
- the right to housing (Article 31).

Albania has accepted Articles 7, 8 and 19 from this group.

The reference period was 1 January 2007 to 31 December 2009.

The present chapter on Albania concerns 27 situations and contains:

- 11 conclusions of conformity: Articles 7§4, 7§5, 7§8, 8§3, 8§4, 19§1, 19§2, 19§5, 19§7, 19§9 and 19§11 ;
- 8 conclusions of non-conformity: Articles 7§1, 7§2, 7§3, 7§6, 7§7, 7§10, 8§1 and 8§2.

In respect of the other 8 situations concerning Articles 7§9, 8§5, 19§3, 19§4, 19§6, 19§8, 19§10 and 19§12, the Committee needs further information in order to assess the situation. The Government is therefore invited to provide this information in the next report on the articles in question.

The next Albanian report deals with the accepted provisions of the following articles belonging to the first thematic group "Employment, training and equal opportunities":

- the right to work (Article 1),
- the right to vocational guidance (Article 9),
- the right to vocational training (Article 10),

- the right of persons with disabilities to independence, social integration and participation in the life of the community (Article 15),
- the right to engage in a gainful occupation in the territory of other States Parties (Article 18),
- the right of men and women to equal opportunities (Article 20),
- the right to protection in cases of termination of employment (Article 24),
- the right to workers to the protection of claims in the event of insolvency of the employer (Article 25).

The deadline for the report was 31 October 2011.

¹ *The conclusions as well as state reports can be consulted on the Council of Europe's Internet site (www.coe.int/socialcharter).*

Article 7 - Right of children and young persons to protection

Paragraph 1 - Prohibition of employment under the age of 15

The Committee takes note of the information contained in the report submitted by Albania.

According to Article 98 of the Labour Code, the minimum age for employment is 16.

In its last conclusion, the Committee asked whether this prohibition applied to agricultural work, family enterprises and private households and whether it covered all forms of economic activity irrespective of the status of the worker (employee, self-employed, unpaid helper or other).

According to Article 3 of the Labour Code, this provision applies to all public and private activities and self-employed. Under Article 5, "socially, voluntarily or good neighbourhood relations committed work, or household chores performed by children, as long as they live with the employer in a common economy, except when it is proved that those who perform them are employed, do not fall under the scope of this provision."

Under Article 98§1 of the Labour Code, children aged 14-16 may exceptionally be employed during school holidays in light work which do not affect their health and growth. In the case of children under 16 years old, there should not be more than 6 hours of work per day. Children aged 14-16 must have 4 weeks of rest per year from school and from any kind of employment.

In its last conclusion the Committee asked for detailed information on the definition of light work.

According to the Decision of the Council of Ministers No. 384, of 20 May 1996, "On the protection of minors at work", "light work" is defined as all work, which due to the nature of assignments that it involves to be performed and the special circumstances when performed:

- do not affect minors' safety, health and growth;
- do not prevent them from attending school, do not prevent their participation in vocational education and training as adopted by the competent authority and do not affect their capacity to benefit from the acquired training.

In its last conclusion the Committee asked for information on the precise rules as regards the employment of under-18s in cultural, artistic, sport and advertising activities.

The Instruction of the Ministry of Labour Social Affairs and Equal Opportunities No. 13, of 6 July 1998, "On the protection of minors at work", defines the employment procedures for minors up to 18 years old in cultural, artistic, sport and promotion activities. According to the Instruction, employment of minors up to 18 years old with the purpose of participating in activities of cultural, artistic, sport and journalistic activity is subject to a preliminary authorization issued by the labour inspectorate. The application for the authorization contains the first name and surname of the employer or, of his or her company, the address, the first name and surname of the employee, his or her date of birth, the job description and the work schedule. The employer must provide the labour inspectorate with all other necessary data. The authorization is issued under the conditions defined by the labour inspectorate and only if:

- they are not of a nature that affect minors' safety, health and growth, and

- they are not of a nature that prevent them from attending school, participation in vocational education and training programs as adopted by the competent authority and do not affect their capacity to benefit from the acquired training.

The Committee finds that the definition of light work is not sufficiently precise because there is no definition of the types of work which may be considered light or a list of those which are not.

The Committee notes the information regarding Law No. 10237 of 18 February 2010, "On safety and health at work", according to which the employment of children is allowed in industrial and agriculture activities and in private households provided that: "The employer must assess all risks and exposure against hazardous elements in the work processes and conditions for those kinds of activities, which may constitute a special hazard to vulnerable groups, by means of defining their nature, extent and duration." The Committee notes that the act falls outside the reporting period, but asks that the next report contain detailed information as to the effects of the act on protection of children against employment under age of 15.

The Committee notes the information regarding the draft law "On child's rights protection" and it asks that next report contains information regarding the changes it will bring once adopted and in force.

The Committee recalls that the effective protection of the rights guaranteed by Article 7§1 cannot be ensured solely by legislation; the legislation must be effectively applied in practice and rigorously supervised. The Labour Inspectorate has a decisive role to play in this respect. In its last conclusion the Committee asked for information on 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 Committee takes note of the statistics contained in the report concerning the inspection of private enterprises about the registered workers under 18 years old. The report states that out of the inspected enterprises by the Labour Inspectorate, it has been observed that the employment of minors under 18 has been at the rates of 0.6% in 2007, 0.65% in 2008 and 0.3% in 2009. No cases of employment of children under 15 years old have been observed. In its last conclusion the Committee asked 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 report states that, based on the inspections carried out by the Labour Inspectorate, it is observed that 13.3% of employed children result without individual employment contracts. 87.7% of children who are recorded as employees are insured employees, while 77% of young workers are employed with a regular authorisation by the Labour Inspectorate. Administrative penalties are provided for by law and the report states that during the reporting period 5 fines of 1,800,000.00 Lek (13, 630.16 €) have been imposed as penalties.

However the Committee recalls that, in its last conclusion on Article 3§3 in 2009, it concluded that the situation in Albania was not in conformity on the ground that there is no efficient labour inspection system.

Moreover, the Committee notes from another source¹, that in practice the exploitation of children at work is a severe problem in Albania. Child labour occur in extremely hazardous occupations in agriculture, construction, small shoe and clothing factories and

the service sector and many children, many of them of Roma origin, work as shop vendors or beggars. They are employed both as permanent workers and as seasonal or day workers. According to the same source, the Construction Workers' Trade Union reports that 20% of construction workers are less than 16 years of age. In the light of these findings the Committee assesses that the situation in practice does not guarantee the protection of children from employment under the age of 15.

Conclusion

The Committee concludes that the situation in Albania is not in conformity with Article 7§1 of the Charter on the grounds that:

- definition of light work authorised by legislation is not sufficiently precise as there is no definition of the types of work which may be considered light or a list of those which are not, and
- prohibition of employment under the age of 15 is not guaranteed in practice.

¹*ITUC report on the Internationally recognised core labour standards in Albania, April 2010: http://www.ituc-csi.org/IMG/pdf/Final_Albania_cls_report.pdf*

Article 7 - Right of children and young persons to protection

Paragraph 2 - Prohibition of employment under the age of 18 for dangerous or unhealthy activities

The Committee takes note of the information contained in the report submitted by Albania.

In its last conclusion the Committee asked confirmation that the prohibition covers young people under the age of 18 and to indicate the legislation in which the relevant tasks are listed.

According to Article 100 of the Labour Code, only adult persons over 18, can be employed to difficult work or work that presents a risk to health or personality. Special rules on duration and conditions ruling hard or hazardous work are set by the Council of Ministers. The Committee takes note of the regulations under Law No. 10237 of 18 February 2010, "On safety and health at work". It notes that it falls outside the reporting period and it will examine it in its next conclusion.

The report indicates the Decision of the Council of Ministers No. 207 of 9 May 2002, amended by Decision of Council of Ministers No. 248 of 13 April 2010, which lists the hazardous forms of work. According to this decision the employer must inform the Labour Inspectorate about the employment of every employee aged 16 to 18. The notification about the employment must contain the first name and the surname of the employer, the name of the enterprise, the employer's address, the first name and the surname of the worker, his or her date of birth, the description of the job to be performed and the work schedule. The employer is obliged to provide the labour inspectorate with all other necessary data. The Inspectorate prohibits the hiring of the employee when the employment:

- exceeds the objective physical or psychological capacity of the employees;
- involves a harmful exposure to physical agents, biological and chemical substances specified in a list prepared by the Council of Ministers;

- presents risks of accident, which young people may not be able to identify or prevent due to lack of experience or proper training;
- puts health at risk, due to extreme temperatures, high noise or strong vibration.

The Labour Inspectorate ensures that the list of hazardous forms of work is constantly updated taking into account current developments. The Inspectorate examines the contents of this list at least once a year and makes its proposals to the Minister of Labour, Social Affairs and Equal Opportunities.

On the other hand, when providing information regarding the medical check-ups of the young workers, the report states that under Council of Ministers Decision 499/2009, the regular health examination has to be performed, i.a. every 6 months for employees under 18 years old who are employed in hazardous jobs as laid down in the list of hazardous jobs. The Committee asks for clarification on the use of this legal provision.

In its last conclusion the Committee asked for information as to whether and in what circumstances the prohibition of dangerous or unhealthy work may be waived. The Committee recalls that it interprets such derogations in keeping with the Appendix to Article 7§2. Pursuant to the Appendix, states parties 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. The report states that in case of work involving welding, oxygen and electric cutting, the employment of young workers is allowed in case when it is carried out as part of implementation of vocational training programs.

In its last conclusion the Committee asked the next report to contain information on the monitoring activities carried out by the Labour Inspectorate in this field. The Committee takes note of the information contained in the report regarding the results of the inspecting activities carried out by the Labour Inspectorate. It notes that 30% of the young workers are employed in shoemaking. The Committee asks whether in this case young workers are employed in leather processing as well.

The Committee recalls in this context that, in its last conclusion on Article 3§3 in 2009, it concluded that the situation in Albania was not in conformity on the ground that there is no efficient labour inspection system.

Moreover, the Committee notes from another source¹, that in practice the exploitation of children at work is a severe problem in Albania. Child labour occur in extremely hazardous occupations in agriculture, construction, small shoe and clothing factories and the service sector and many children, many of them of Roma origin, work as shop vendors or beggars. They are employed both as permanent workers and as seasonal or day workers. According to the same source, the Construction Workers' Trade Union reports that 20% of construction workers are less than 16 years of age. In the light of these findings the Committee assesses that the situation in practice does not guarantee the protection of children from employment under the age of 18 for dangerous or unhealthy activities.

Conclusion

The Committee concludes that the situation in Albania is not in conformity with Article 7§2 of the Charter on the ground that the prohibition of employment under the age of 18 for dangerous or unhealthy activities is not guaranteed in practice.

¹ITUC report on the Internationally recognised core labour standards in Albania, April 2010:
http://www.ituc-csi.org/IMG/pdf/Final_Albania_cls_report.pdf

Article 7 - Right of children and young persons to protection

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

The Committee takes note of the information contained in the report submitted by Albania.

In the case of states that have set the same age, which must be over 15 years, for admission to employment and the end of compulsory education, the Committee examines questions related to light work under Article 7§1. Albania has set the age for admission to employment at 16 and the age of end of compulsory education at 16. For this reason, the Committee refers to its findings and conclusion under Article 7§1. However, since Article 7§3 is concerned with the effective exercise of the right to compulsory education, the Committee will examine relevant matters under this article.

With respect to work during school holidays, the Committee notes that under Article 98§1 of the Labour Code, 14-16 years old children may exceptionally be employed during school holidays in light work which do not affect their health and growth. In the case of children under 16 years old, there should not be more than 6 hours of work per day. Children of 14-16 years of age must have 4 weeks leave per year from school and from any kind of employment.

The Committee refers to its interpretative statement on Article 7§3 in the General Introduction. It requests clarification as to whether the situation in Albania complies with the principles set out in this statement. In particular, it asks whether the rest period free of work has a duration of at least two consecutive weeks during the summer holiday. It also asks what are the rest periods during the other school holidays.

As regards the situation in practice, the Committee notes from other sources, such as ITUC report on the Internationally recognised core labour standards in Albania, 2010, that in practice many children, especially in rural areas, leave school before the end of compulsory education to work with their families. Parents are required to pay for supplies, books and even heaters for some classrooms, making school prohibitively expensive for many families and leaving a growing population of vulnerable, unregistered children at risk of trafficking or exploitation. The majority are Roma children, who are the largest group to be out of school and the majority of street children.

Conclusion

The Committee concludes that the situation in Albania is not in conformity with Article 7§3 of the Charter on the ground that the effective protection against work which would deprive children subject to compulsory schooling of the full benefit of their education is not guaranteed in practice.

Article 7 - Right of children and young persons to protection

Paragraph 4 - Working time for young persons under 18

The Committee takes note of the information contained in the report submitted by Albania.

Under the Decision of the Council of Ministers No. 384 of 20 May 1996, "On the protection of minors at work", as amended, the official maximum working hours for young workers under 18 years old may not exceed 6 hours per day and they are entitled to a break of no less than 2 days per every seven days and the weekly break includes Sunday (exceptions may be made only for justifiable reasons and when accepted by the Labour Inspectorate). Weekly break of 2 non-successive days may be granted also up to 6 times per year, if this is imposed by justifiable technical and organization reasons. They benefit a paid break of no less than 30 uninterrupted minutes if they work more than 4 hours and a half per day. They are entitled to at least 4 weeks of annual holidays.

The official maximum working hours for light work for children under 16 years old may not exceed 6 hours per day and not more than 30 hours per week. At least once per year, children under 16 years old must have a break period of 4 weeks free from any schooling activities and from any kind of work.

In its last conclusion the Committee asked whether all the young workers (under 18) are sufficiently covered by provisions prescribed by legislation, collective agreements or other measures. The report states that the scope of the Labour Code, including the provisions regulating the work of young workers, applies to all public and private activities and self-employed (Article 3 of the Labour Code) and in the same manner the Decision of the Council of Ministers No. 384 of 20 May 1996, "On the protection of minors at work", as amended, pursuant to the Labour Code, applies to the same categories, covering thus all public and private activities and self-employed.

The Committee reiterates its question as to 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.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Albania is in conformity with Article 7§4 of the Charter.

Article 7 - Right of children and young persons to protection

Paragraph 5 - Fair pay

The Committee takes note of the information contained in the report submitted by Albania.

In application of Article 7§5, domestic law must provide for the right of young workers to a fair wage and of apprentices appropriate allowances.

Young workers

In its last conclusion the Committee pointed out that under Article 7§5 of the 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 asked for clear information on the situation in this regard.

The report states that the minimum wage applies to all persons entering the labour market and thus the young workers are entitled to at least the minimum wage, mandatorily applicable to all nationals or foreigners. The Committee has found the situation to be not in conformity in its conclusion on Article 4§1 regarding fair pay for adult workers, since the net minimum wage stands below 60% of net median wage. The

net median wage in 2008 was 242 €. Since the requirement for young workers allows for a wage 20-30% lower than the appropriate minimum wage of the adult workers, the acceptable threshold would be between 116.2 € (20% lower) to 101.6 € (30% lower). The minimum wage for young workers in 2008 was 122 € (17.000 Lek).

The Committee assesses that the situation complies with the requirements of Article 7§5 as to the young workers.

Apprentices

On the other hand, the report contains no information regarding the situation of the apprentices.

The Committee recalls that apprentices may be paid lower wages, since the value of the on-the-job training they receive must be taken into account. However, the apprenticeship system must not be deflected from its purpose and be used to underpay young workers. Accordingly, the duration of apprenticeships should not last too long and, as skills are acquired, the allowance should be gradually increased throughout the contract period: starting from at least one-third of the adult starting wage or minimum wage at the commencement of the apprenticeship, and arriving at least at two-thirds at the end.

The Committee asks that next report contains clear information whether apprentices are entitled to appropriate allowances.

The Committee asks information regarding what is the situation in practice as to the pay of young workers and apprentices.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Albania is in conformity with Article 7§5 of the Charter.

Article 7 - Right of children and young persons to protection

Paragraph 6 - Inclusion of time spent on vocational training in the normal working time

The Committee takes note of the information contained in the report submitted by Albania.

The report does not provide relevant information which would allow for an assessment of the situation concerning Article 7§6.

The Committee recalls that in application of Article 7§6, time spent on vocational training by young people during normal working hours must be treated as part of the working day. Such training must, in principle, be done with the employer's consent and be related to the young person's work. Training time must thus be remunerated as normal working time, and there must be no obligation to make up for the time spent in training, which would effectively increase the total number of hours worked. This right also applies to training followed by young people with the consent of the employer and which is related to the work carried out, but which is not necessarily financed by the latter.

In its last conclusion the Committee posed a number of questions to which the report does not provide any answers. In this situation, the Committee is not able to assess the situation regarding Article 7§6.

The Committee asks that next report provides information on 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 also asks whether they are paid for time spent in vocational training and, if so, on what basis.

The Committee asks that next report provides information on 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. It 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.

Conclusion

The Committee concludes that the situation in Albania is not in conformity with Article 7§6 of the Charter on the ground that it has not been established that the right to have time spent on vocational training considered to be working time and remunerated as such is guaranteed in practice.

Article 7 - Right of children and young persons to protection

Paragraph 7 - Paid annual holidays

The Committee takes note of the information contained in the report submitted by Albania.

In application of Article 7§7, young persons under 18 years of age must be given at least four weeks' annual holiday with pay. The arrangements which apply are the same as those applicable to annual paid leave for adults (Article 2§3). For example, employed persons of under 18 years of age should not have the option of giving up their annual holiday with pay; in the event of illness or accident during the holidays, they must have the right to take the leave lost at some other time.

In its Conclusions 2010 the Committee found the situation not to be in conformity with Article 2§3 on the ground that employees may relinquish annual leave in return for increased remuneration. The report fails to show that young workers make an exception. The Committee asks for confirmation whether the same rule applies to young workers or whether there are any exemptions to this category of workers.

Conclusion

The Committee concludes that the situation in Albania is not in conformity with Article 7§7 of the Charter on the ground that it has not been established that young workers do not relinquish annual leave in return for increased remuneration.

Article 7 - Right of children and young persons to protection

Paragraph 8 - Prohibition of night work

The Committee takes note of the information contained in the report submitted by Albania.

Article 101 of the Labour Code prohibits employment of under 18 years old at night work.

In its last conclusion the Committee asked whether there are exceptions to this prohibition and, if so, what form they take. It also asked whether this prohibition is fully applied in practice.

In reply, the report states that there are no other provisions of laws or by-laws of the Albanian legislation which allow for an exception to the above-cited provision of the Labour Code and that no cases of employment of young workers under 18 years old on night shifts have been observed in practice.

Conclusion

The Committee concludes that the situation in Albania is in conformity with Article 7§8 of the Charter.

Article 7 - Right of children and young persons to protection

Paragraph 9 - Regular medical examination

The Committee takes note of the information contained in the report submitted by Albania.

The Committee recalls that, in application of Article 7§9, domestic law must provide for compulsory regular medical check-ups for under-eighteen year olds employed in occupations specified by national laws or regulations. These check-ups must be adapted to the specific situation of young workers and the particular risks to which they are exposed.

The obligation entails a full medical examination on recruitment and regular check-ups thereafter. The intervals between check-ups must not be too long. The medical check-ups foreseen by Article 7§9 should take into account the skills and risks of the work envisaged.

The Decision of the Council of Ministers No. 499 of 6 May 2009, "On the protection of minors at work", as amended, defines the rule concerning regular medical examination of children.

The Decision of the Council of Ministers No. 384/1996, as amended, provides that, when employing a young worker, the employer must first verify the working conditions and, among others, examination of health condition of minors on regular basis and for free.

Under Council of Ministers Decision 499/2009, the regular health examination has to be performed:

- every 12 months of work for employees under 18 years old who are employed in light work;
- every 6 months for employees under 18 years old who are employed in hazardous jobs as laid down in the list of hazardous jobs.

The employer covers expenses of young workers' regular health check-ups and ensures, maintaining the confidentiality of every record concerning his or her health situation.

The report states that the standard general check-up, which young workers under 18 years old must undergo, includes physical examination, thorax x-ray, complete blood and urine test and specific examinations, based on the exposures against agents specified by nature of work and medical doctor's evaluation.

Specific exposures include defining of the level of toxic elements in blood and urine. Under the Council of Ministers' Decision No. 742 of 6 November 2003 "On some additions and amendments to the Council of Ministers Decision No. 692 of 13 December 2001 "On special measures of safety and health protection at work", as well as, the Council of Ministers Decision No. 2 of 25 June 2004, the medical doctor of the enterprise carries out the regular medical examination of all workers once in 6 six months. In addition, before starting work, the worker must be provided with a report by a medical commission indicating that he or she is able to work. Employees under 18 years old become also subject to these regular examinations.

The Committee notes that the list of examinations on the routine check-ups is currently under review and it asks that next report provides information on the updated list.

In its last conclusion, the Committee asked if the six-month interval between check-ups is actually respected. The report provides no answer to the question posed by the Committee. The Committee reiterates its question.

The report also fails to provide any information regarding the situation in practice regarding the medical examination of the young workers. The Committee asks that next report provides this information.

The Committee reminds that if the next report does not contain information on the questions raised above there will be nothing to establish that the situation is in conformity with Article 7§9 of the Charter.

Conclusion

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

Article 7 - Right of children and young persons to protection

Paragraph 10 - Special protection against physical and moral dangers

The Committee takes note of the information contained in the report submitted by Albania.

Protection against sexual exploitation

The Committee recalls that it previously examined the legislative framework prohibiting and protecting children from sexual exploitation (Conclusions 2006). It requested further information on criminal liability for the possession of child pornography. However, the Committee notes from the report that the Criminal Code as amended penalises the "use of minors for the production of pornographic materials, as well as their dissemination or publication in internet or other forms", which implies that simple possession of child pornography does not constitute a criminal offence. The Committee considers that the situation is not in conformity with Article 7§10 of the Charter.

The Committee recalls that it had previously concluded that the situation in Albania was not in conformity with Article 7§10 because of the extent of the problem of sexual exploitation and trafficking in children and the lack of evidence that the Government had taken sufficient measures to combat the phenomenon. The Committee asked for information on the efforts taken in the areas of reducing and preventing the occurrence of sexual exploitation, sale of children and trafficking.

The Committee observes that the 2008 amendment to the Criminal Code introduced a new paragraph to the article on trafficking in children, under which sale of children

constitutes a criminal offence. The Committee notes the examples of amendments of the Criminal Code; however, it requires more detailed information about measures undertaken in practice to reduce and prevent sexual exploitation of children.

As regards trafficking in children, the Committee notes from other sources¹ that Albania remains a country of origin of women and children trafficked for the purposes of sexual exploitation and forced labour, including forced begging, although there has been a decline in the number of persons trafficked. However, Albania has made considerable effort in combating this crime and is no longer considered a major country of transit.

The Committee takes note of all measures described in the report that Albania has undertaken in recent years to fight human trafficking more efficiently and create a legislative and organisational-operational framework covering the areas of investigation and prosecution, protection and prevention. Albania has continued to implement the National Strategy for the Fight against Trafficking in Human Beings-2010 and the associated strategy for the fight against child trafficking and the protection of child victims of trafficking. The Office of the National Anti-trafficking Coordinator has carried out extensive work on prevention and public awareness-raising to combat trafficking. Specialised training has been provided to relevant institutions at local and national level. Considerable efforts have been made to improve the identification of victims of trafficking as well as the functioning of the national victim referral mechanism. The database on victims of trafficking has been operational since September 2008 and resulted in increased number of identified victims and convictions for human trafficking offences. Coordination between central, regional and local levels and with NGOs has improved. Cross-boarder cooperation with neighbouring countries has improved with the signing of a number of bilateral agreements mainly in the fields of law enforcement and boarder control.

Victims are not penalised in Albania for unlawful acts committed as a direct result of their being trafficked. The Government encourages victims to participate in investigations and prosecutions of trafficking offenders.

In this connection the Committee notes from the report of the Commissioner for Human Rights² that human and financial resources remain insufficient for the protection and reintegration of victims of trafficking and that divisions of tasks and responsibilities of relevant bodies are not clearly defined. Further, whereas trans-national trafficking seem to be declining, the above-mentioned sources concur in the assessment that internal trafficking has been on the rise. The Committee considers that measures taken to combat trafficking in children are not sufficient.

Protection against the misuse of information technologies

The Committee recalls that 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 had previously asked whether there was legislation or codes of conduct used by Internet service providers in order to protect children.

In this regard the Committee notes from the report that article 117 of the Criminal Code prohibits the “using of children to produce pornography stuff, to disseminate or publish in internet or in other forms”. It further notes that in pursuance of the Personal Data Protection Law, the Office of the Commissioner for Data Protection has been established and the Commissioner has been appointed. The Commissioner has drafted a package of advice for the protection of personal data addressed to children and young people,

and containing practical advice the protection of personal data and preserving privacy while using internet, social forums, computers, etc.

Protection from other forms of exploitation

The Committee recalls that under Article 7§10 States Parties 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. States parties must ensure not only that they have the necessary legislation to prevent exploitation and protect children and young persons, but also that this legislation is effective in practice.

The law criminalises exploitation of children for labour or forced services. In January 2008 the criminal code was amended to include the exploitation of children for begging as a separate criminal offence. However, the Committee notes that the law is not enforced effectively. According to the 2011 Report of the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) more than 50,000 children under 18 years of age worked either full or part time. The majority of child labourers worked as street or shop vendors, beggars, farmers or shepherds, drug runners, vehicle washers, textile factory workers, miners, or shoeshine boys. International Trade Union Confederation (ITUC) report³ suggested that begging, whether forced or not, started at a young age – as early as four or five years – and was related to poverty and discrimination. Police generally ignored these practices. According to ATAC (the Albanian Coalition “All Together Against Child Trafficking”)⁴, the Albanian legal framework against child exploitation has not been implemented so far and child protection mechanisms at both institutional and community levels are weak or nonexistent, and in most cases fail to protect children from such risks.

The Committee previously noted that street children represented the most unprotected category of children in Albania and asked about measures to assist street children. The report provides no information in this regard. The Committee notes from the ITUC report that homeless street children and children begging on the streets are common in Albania, and are particularly exposed to the worst forms of child labour and were at highest risk of becoming victims of internal trafficking. Roma make up 90% of street children. The majority of street children are not registered at the civil status office and, as a consequence, do not attend school and lack access to public services such as healthcare. The Committee considers that measures taken to assist and protect street children are not sufficient.

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:

- simple possession of child pornography is not a criminal offence;
- measures taken to combat trafficking in children are not sufficient;
- measures taken to assist and protect street children are not sufficient.

¹*European Union: European Commission, Commission Staff Working Document: Albania 2009 Progress Report, 14 October 2009, SEC(2009) 1337;*

²*Report by the Commissioner for Human Rights, Mr Thomas Hammarberg, on his visit to Albania, 27 October – 2 November 2007, CommDH(2008)8 / 18 June 2008; European Union: European Commission, Commission Staff Working Document: Albania 2009 Progress Report, 14 October 2009, SEC(2009)1337*

³http://www.ituc-csi.org/IMG/pdf/Final_Albania_cls_report.pdf

⁴*UN Human Rights Council, Summary prepared by the Office of the High Commissioner for Human Rights - Albania, 21 July 2009, A/HRC/WG.6/6/ALB/3*

Article 8 - Right of employed women to protection of maternity

Paragraph 1 - Maternity leave

The Committee takes note of the information contained in the report submitted by Albania.

Right to maternity leave

The situation which was previously found to be in conformity with Article 8§1 has remained unchanged. The same regime applies to women employed in the public sector.

Right to maternity benefits

The Committee noted in its last conclusion that employed women on maternity leave are entitled to maternity benefit provided they have been insured for a period of twelve months prior to pregnancy. It found that this qualifying period is lengthy and requested further information, for example on the definition of this period, and whether periods of unemployment are taken into account.

The required period of twelve months' insurance prior to pregnancy to be entitled to maternity benefits corresponds to the last full calendar year preceding the year during which maternity benefits are paid. This qualifying period includes periods of unemployment. The Committee asks whether women who do not fulfil the qualifying conditions for maternity benefit are entitled to other benefits. In the meantime, the Committee finds that this qualifying period is too long to be in conformity with Article 8.

The report confirms that, in accordance with Section 26§1 of Act No. 7703 of 11 May 1993 on Social Insurance, the amount of benefit for the prenatal leave and first 150 days of post natal maternity is 80% of the previous average salary calculated over a 12-month period and 50% for the remaining period of maternity leave. The Committee considers this aspect in conformity with the requirements of Article 8§1.

The same regime also applies to women employed in the public sector.

Conclusion

The Committee concludes that the situation in Albania is not in conformity with Article 8§1 of the Charter on the ground that the required period of twelve months of contribution to the social security scheme prior to pregnancy to be entitled to maternity benefits is too long.

Article 8 - Right of employed women to protection of maternity

Paragraph 2 - Illegality of dismissal

The Committee takes note of the information contained in the report submitted by Albania.

Prohibition of dismissal

According to Article 107 of the Labour Code, the dismissal of a woman on maternity leave is invalid. It is for the employer to prove that dismissal is not based on pregnancy or birth (Article 105(a), point 2 of the Labour Code). According to Article 107 of the Labour Code, any dismissal taking place from the moment the employee has made a claim for maternity benefits is null and void. In order to cover the period from the moment pregnancy is notified to the employer, Article 146 of the Labour Code stipulates that

dismissals which are not based on reasonable grounds, such as those based on pregnancy, are invalid. Employers who are found to have dismissed an employee without a reasonable ground are required to pay compensation equal to one year's salary of the employee concerned.

Consequences of unlawful dismissals

The Committee notes that Article 146 of the Labour Code lays down a ceiling on the amount of compensation to be paid in the event of unlawful dismissals based on pregnancy fixed at one year's worth of her salary. It underlines that domestic law must not prevent courts from awarding a level of compensation that is sufficient both to deter the employer and fully compensate the victim of dismissal. The Committee asks whether this upper limit covers compensation for both pecuniary and non-pecuniary damage or whether unlimited compensation for non-pecuniary damage can also be sought by the victim through other legal avenues (e.g. anti-discrimination legislation). It also asks whether both types of compensation are awarded by the same courts, and how long it takes on average for courts to award compensation. Should the next report not provide the requested information, there will be nothing to establish that the situation is conformity in this respect.

Furthermore, Article 146 does not provide for reinstatement but only for compensation. The Committee recalls that reinstatement should be the rule (Conclusions 2005, Cyprus). Therefore, it cannot consider the situation to be in conformity on this point.

The Committee notes that the same regime applies to women employed in the public sector.

Conclusion

The Committee concludes that the situation in Albania is not in conformity with Article 8§2 of the Charter on the ground that reinstatement is not the rule in case of unlawful dismissal based on pregnancy.

Article 8 - Right of employed women to protection of maternity

Paragraph 3 - Time off for nursing mothers

The Committee takes note of the information contained in the report submitted by Albania.

Decision of the Council of Ministers No. 397 of 20 May 1996, as amended, "On Special Protection of Pregnant Women and Motherhood" provides for the right of breastfeeding mothers to paid leave during working hours, no less than 20 minutes every three continuous working hours. This applies until the child is one year old. The Committee asks whether this decision also applies to women employed in the public sector.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Albania is in conformity with Article 8§3 of the Charter.

Article 8 - Right of employed women to protection of maternity

Paragraph 4 - Regulation of night work

The Committee takes note of the information contained in the report submitted by Albania.

The Committee already found that Article 108 of the Labour Code prohibits night work for pregnant women (Article 108) and that Decision of the Council of Ministers No. 397 of 20 May 1996 as amended "On Special Protection of Pregnant Women and Motherhood" provides that pregnant women and breastfeeding mothers cannot be obliged to start work before 5.00am (in summer and 6.00am in winter) or work after 8.00pm.

The Committee asked whether special conditions are imposed regarding, for example, working hours breaks and rest period where women who have recently given birth or are breastfeeding decide to undertake night work. The report specifies that Article 108 of the Labour Code also prohibits night work for women who are breastfeeding. The Committee asks whether this prohibition also covers women who have recently given birth and are not breastfeeding, or whether special conditions of work have to be provided.

The Committee notes that the same regime applies to women employed in the public sector.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Albania is in conformity with Article 8§4 of the Charter.

Article 8 - Right of employed women to protection of maternity

Paragraph 5 - Prohibition of dangerous, unhealthy or arduous work

The Committee takes note of the information contained in the report submitted by Albania.

Article 104/2 of the Labour Code prohibits the employment of pregnant women or women who are breastfeeding in work which is heavy or dangerous or which may damage an unborn child. Decision of the Council of Ministers No. 397 of 20 May 1996 as amended "On Special Protection of Pregnant Women and Motherhood" prohibits work which endangers the health and safety of mother or child. Mining is regarded as dangerous and unhealthy and therefore prohibited. The Committee asks whether this prohibition applies to women employed in the public sector.

The Committee asked in its previous conclusion (Conclusions 2007) for further information on work considered as dangerous and unhealthy. According to the report, Council of Ministers Decision No. 207 of 9 May 2002 "On Determining the Difficult and Dangerous Jobs" determines the list of dangerous and difficult work. In addition to mining, this list includes, *inter alia*, work in the metal industry, work in pressurised enclosures, work in the chemical industry (e.g. manufacturing of batteries or paper), work involving ionising radiation as well as electromagnetic fields, work in microbiological laboratories. Act No. 9970 of 24 July 2008 "On Gender Equality in the Society" provides that restrictions on the employment of pregnant and breastfeeding women in difficult and dangerous work shall be reviewed periodically, in the light of scientific and technical knowledge.

As to the re-assignment of women who are pregnant or breastfeeding if their work is unsuitable to their condition, the report indicates that Section 53 of Act No. 10237 of 18 February 2010 "On Insurance and Health at Work" states that in case of risk on the security and health of pregnant women or breastfeeding women employers must make arrangements to eliminate such risk or to adapt the workplace. If this is not possible, employers should transfer the women concerned to another work, with equal pay or, should no transfer be possible, grant paid leave until the risk is avoided. The Committee takes note of this information, even though it falls outside the reference period, and asks whether a right to return to their previous employment is guaranteed when their state of health permits it (Conclusions 2005, Lithuania).

Conclusion

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

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 contained in the report submitted by Albania.

Migration trends

There is a high number of emigrants in Albania, with around 27.5 % of the total population living abroad (UNDP, Human Development Report, 2009). Immigration is not an equally significant phenomenon in the country (2.8 per cent of the population - *ibidem*).

Change in policy and the legal framework

The emphasis of the National Strategy on Migration (Decision by the Council of Ministers No.760 / 2004) and the corresponding Action Plan (Decision by the Council of Ministers No.296 / 2005) is centred on managing emigration flows rather than on the development of an immigration policy. In this context, a new legal framework on 'Emigration of Albanian citizens for employment purposes' was adopted (Law No. 9668 / 18.12.2006). Further to the relevant provisions of the Constitution, this law represents a new reference for the implementation of the National Strategy on Migration and the corresponding Action Plan. In 2008, a new law on foreigners (No. 9959 of 17.07.2008) was approved, setting out principles and regulations for foreigners entering Albania and guaranteeing their rights. This law reflects the provisions of the *acquis communautaire* in the field of migration.

Free services and information for migrant workers

The Law on 'Emigration of Albanian citizens for employment purposes' establishes that the responsible State authorities create the necessary legal and administrative facilities for the Albanian citizens who want to emigrate legally or who want to return. The same authorities must provide the necessary legal and administrative facilities for the management of emigration, through the periodic, public or individual, information on employment and vocational training-related legislative situation and respective modifications in the host countries. They must guarantee to the Albanian citizens who want to emigrate, including the returned emigrants, the right of information and counselling free of charge in the field of vocational training, job brokering services, social protection, freedom of association, possibilities for housing, education and social security, as well as the right of getting knowledge through media tools, brochures, etc., on living and working conditions in the host country. More particularly, the law No. 9668 states that the Ministry of Labour, Social Affairs and Equal Opportunities helps in organising orientation training courses, free of charge, for learning the language or the basic skills on the professions required by the host country, for the Albanian citizens who want to emigrate as well as for their family members who will emigrate or join them, under the condition that they are registered on the "Registry of Emigrants". The National Strategy on Migration and the related Action Plan also refer to services available to citizens wishing to emigrate, including the setting up of information offices at local level. According to the Strategy and the Action Plan on 'Reintegration of Returned Albanian citizens 2010-2015', information on professional opportunities, education, health services and housing are provided to nationals having returned to Albania and wishing to re-integrate into the life of the country. In this framework, an 'Emigration fund' was also established. The latter is aimed at: a) the production and dissemination of materials

containing information and orientation on legal, cultural and ethnic aspects of the host countries, that will be offered to the citizens who want to emigrate for employment purposes, to returned emigrants as well as to their family members who will emigrate or join them; b) orientation courses on linguistic and professional formation; c) citizens' repatriation.

Law No. 9959 of 2008 on 'Foreigners' stipulates that the responsible authorities must assure the conditions for the integration of foreigners who have the right to stay in the Republic of Albania into economic, cultural and social life. The same law states that for the integration of foreigners: a) Albanian language courses are organised, as well as other forms and courses for professional advancement and formation; b) information is secured about the rights of foreigners and the possibilities of integration into Albanian society; c) activities are organised for the teaching of history, culture, civilisation and the legal system of the Republic of Albania; d) meetings are organised on the occasion of various occurrences where Albanian citizens also take part for mutual understanding, knowledge and promotion. Moreover, it is foreseen by the same law that the public institutions must cooperate, according to their competences, with social partners, non-profit organisations and international organisations for the promotion and implementation of programmes of integration of foreigners into society.

The National Employment Service (NES) working within the Ministry of Labour, Social Affairs and Equal Opportunities, operates through a number of regional and local employment offices. Special structures have been established in these offices called 'Migration Counters' (in 12 regional employment offices and in 2 local employment offices). These counters inform citizens who wish to emigrate regularly and those returnees who seek reintegration and intend to stay in Albania. The already functional 'Migration Counters' provide information on regular emigration and reintegration opportunities upon return. These offices maintain the register of returned Albanian citizens, including those readmitted. The International Organisation for Migration, in coordination with Minister of Labour, Social Affairs and Equal Opportunities has created a 'Migrants Assistance Centre'. This body serves migrants and those in the community who are interested in the migration phenomenon. A migration 'Counsellor' is on duty to answer client's questions and provide advice on migration related matters. Concerning immigration, the Ministry of Foreign Affairs also supplies information for foreigners who want to move to Albania.

The Committee recalls its interpretative statements pointing out that: a) Article 19§1 is one of those provisions "that apply both to the nationals of any given Contracting State who are located in the territory of another or who wish to go there and to any nationals of a state who are moving out of it or wish to do so for the same reasons" and "that, as a general rule, the governments that have accepted this paragraph appear to have taken appropriate measures for meeting its requirements but to have done so for the benefit of either one or the other of the two categories of persons, not for both categories at the same time" (Statement of interpretation - Conclusion I, 1969); b) "the Charter imposes upon each Contracting Party obligations towards both nationals of other Contracting Parties wishing to enter its territory to take up work, and its own nationals wishing to go abroad" **Error! Hyperlink reference not valid.** and that "a Contracting Party could not be released from obligations entered into under the Charter by reason of the reduced volume of migratory movements affecting it" (Statement of interpretation - Conclusions II, 1971). **Error! Hyperlink reference not valid.** **Error! Hyperlink reference not valid.** The Committee asks that the next report provide further information on the measures taken to implement the legal framework and the national strategy relating to migration issues.

In particular, the report should provide examples and figures on the functioning of the 'Migration counters' and other offices assisting migrant workers under the aegis of the National Employment Service.

Measures against misleading propaganda relating to emigration and immigration

The Committee takes note of the reply provided by the report on the measures adopted with regard to the training of police forces in contact with foreigners and asylum seekers. In this respect, it should be noted that in its 4th Report on Albania of 2 March 2010, the European Committee against Racism and Intolerance (ECRI) recognises that efforts have been made to ensure that the various initial and in-service training schemes for police officers give more systematic coverage to human rights protection issues. However, in the same report ECRI regrets that, since there is no collection of data on persons coming in contact with the police, analysed according to their ethnic or national origin or nationality, it is impossible to assess how the measures taken affect the various groups. It also insists on the importance of making public officials alert to the problems of racism, discrimination and intolerance, and, in this respect, contains a number of recommendations aimed at ensuring the adoption of a comprehensive legislation and full implementation of relevant provisions regarding, *inter alia*, migration issues.

The Committee notes that apart from the requested information on the training of police forces, the report does not provide other information on initiatives taken against misleading propaganda relating to emigration and immigration. The Law on 'Emigration of Albanian citizens for employment purposes' sets forth that the responsible State authorities must take all the necessary measures to stop the propaganda and the use of false information, by physical or juridical persons, according to the provisions of the Penal Code, when the above mentioned activity is a criminal action. 'False information' is to be understood by the law as 'any kind of information on the emigration process and employment offers or work conditions, remuneration, training and employment which are not realistic in the host country'. The Committee asks whether specific legislative and/or administrative measures have been taken to fight against misleading propaganda in relation to immigrant workers.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Albania is in conformity with Article 19§1 of the Charter.

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

Paragraph 2 - Departure, journey and reception

The Committee takes note of the information contained in the report submitted by Albania.

Departure, journey and reception of migrant workers

According to the Law No. 9668 of 18.12.2006 on 'Emigration of Albanian citizens for employment purposes', the Ministry of Labour, Social Affairs and Equal Opportunities is the authority which, through the structures in its dependencies, in cooperation with the other ministries and the NGOs concerned, exercises its competencies in taking care of Albanian emigrants before leaving the country and during their return to the Republic of Albania. The Strategy and action plan on 'Reintegration of Returned Albanian citizens

2010-2015' (Decision by the Council of Ministers No. 461, 2010) also refers to the assistance of emigrants who are interested or willing to return to Albania.

The Committee asks whether there are specific legal / administrative provisions on the assistance and reception of immigrant workers. In this respect, the Committee recalls "that 'reception' must be provided at the time of arrival and the period immediately following, that is to say during the weeks in which immigrant workers and their families find themselves in a particularly difficult position" (cf. Conclusions IV - Germany).

Services for health, medical attention and hygienic conditions during the journey

According to the report, emergency assistance is provided free of charge for nationals and immigrant workers. The Strategy and action plan on 'Reintegration of Returned Albanian citizens 2010-2015' include references to health services, medical attention and journey conditions, with regard to Albanian citizens interested or willing to return to their home country. The Committee asks whether similar measures have been taken also in relation to foreign migrant workers.

The Committee asks that the next report provide figures and/or concrete examples on the implementation of Article 19§2 in relation to both the departure and return of Albanian nationals as well as the reception of foreigners.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Albania is in conformity with Article 19§2 of the Charter.

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

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

The Committee takes note of the information contained in the report submitted by Albania with regard to Article 19§3.

It notes that the information provided does not refer to the issue of promotion of the co-operation between social services in emigration and immigration countries.

The Committee is nevertheless informed that as an implementation of the Law on 'Emigration of Albanian citizens for employment purposes' (Law No. 9668 / 18.12.2006), the Ministry of Labour, Social Affairs and Equal Opportunities is entitled to sign bilateral or multilateral agreements on emigration for employment purposes or vocational training on the job, with homologous ministries of the host countries. The law stipulates that the responsible State authorities, for the purpose of the reintegration of the returned emigrants to the Republic of Albania, shall communicate to the host country, information on: - opportunities and conditions of employment in the Republic of Albania; - financial aid provided for economic reintegration; - maintenance of social insurance rights obtained abroad; - steps to be taken to facilitate housing; - recognition of professional qualifications obtained abroad and provision of tests to reach this official recognition; - recognition of educational qualifications obtained abroad for the children of the migrant workers who should be admitted at school without any decrease of educational level. Moreover, it is established in the law that the responsible State authorities shall: - cooperate with the respective authorities of the host countries to exchange information on the work conditions, social insurance, affiliation in free trade-unions to the extent they

are linked to emigration process; - cooperate with the respective authorities of the host countries on social protection-related issues, in cases of benefits from illnesses, pregnancy, accidents in the work, infirmity, professional diseases, unemployment, social assistance and death; - cooperate with the respective authorities of the host countries to elaborate the vocational training curricula for the Albanian citizens wanting to emigrate and recognize the professional qualifications in the host countries; - cooperate with the respective authorities of the host countries to create the legal and administrative facilities for mutual recognition of diplomas, certificates and other necessary qualifications, in order to facilitate the integration of Albanian emigrants in the host countries. The same law set forth that social insurance for the regular Albanian emigrants is regulated based on the social insurance legislation of the Albanian state and the host country, the bilateral agreements in this field and the International conventions on the social insurance where the Republic of Albania is a party.

The State recognises and supports the activity of the private employment agencies that relates inter alia to: a) services of information, counselling and assessment of demands and applications for job placement; b) search of job vacancies; c) services of mediation among job seekers and employers out of the territory of the Republic of Albania, without being party of the employment relations that might arise from this mediation; d) cooperation and coordination of the activity with the responsible State authorities for providing the necessary information, for carrying out formation and orientation courses. The Law on 'Foreigners' (No. 9959 of 17.07.2008) establishes that the public institutions must cooperate, according to their competences, with social partners, non-profit organisations and international organisations for the promotion and implementation of programmes of integration of foreigners into society.

The Committee recalls that the scope of Article 19§3 "Extends to migrant workers immigrating as well as migrant workers emigrating to the territory of any other State. Contacts and information exchanges should be established between public and/or private social services in emigration and immigration countries, with a view to facilitating the life of emigrants and their families, their adjustment to the new environment and their relations with members of their families who remain in their country of origin" (Conclusions XIV-1, Belgium). It also recalls that "Formal arrangements are not necessary, especially if there is little migratory movement in a given country. In such cases, the provision of practical co-operation on a needs basis may be sufficient. Common situations in which such co-operation would be useful would be for example where the migrant worker, who has left his or her family in the home country, fails to send money back or needs to be contacted for family reasons, or where the worker has returned to his or her country but needs to claim unpaid wages or benefits or must deal with various issues in the country in which he was employed" (Conclusions XIV-1, Finland).

The Committee considers that the information provided in the report does not permit it to assess the situation and, in particular, to determine whether inter-service co-operation allows migrant workers to resolve any personal and family difficulties. With this in mind, the Committee asks that the next report provide an updated description of the contacts and information exchanges established by Albanian social services in emigration and immigration countries.

Conclusion

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

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

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

The Committee takes note of the information contained in the report submitted by Albania.

The Law on 'Foreigners' (No. 9959/2008) specifically refers to 1) the right to equal treatment with Albanian citizens regarding working conditions, including provisions for removal from work and rewards, conditions of hygiene of work, technical security, participation in vocational training, the latter provided that they have the right of residence and employment in the territory of the Republic of Albania for a period longer than one year; 2) freedom of association and membership in a union or professional organization that represents the workers, the self-employed and employers, including benefits arising from participation in these organizations, etc.. (c.f. IOM - Albania Fact Sheet).

On the basis of the above-mentioned law, foreigners must be treated in conformity with the fundamental human rights and freedoms and international agreements ratified by the Republic of Albania, while respecting the principle of reciprocity, non-discrimination and treatment no less favourable than Albanian citizens. In this regard, Article 16 of the Constitution, set forth that the fundamental rights and freedoms and the duties contemplated in the Constitution for Albanian citizens are also valid for foreigners and stateless persons in the territory of the Republic of Albania, except for cases when the Constitution specifically attaches the exercise of particular rights and freedoms with Albanian citizenship. The Code of Labour (Law No. 7961 / 1995) stipulates that discrimination in the field of employment or profession is prohibited. The Committee asks that the next report provide clarification on the implementation of the principle of reciprocity and the exceptions concerning the exercise of particular rights and freedoms in relation to citizenship.

Remuneration and other employment and working conditions

The Constitution - Article 49 - establishes that everyone: a) has the right to earn the means of living by lawful work that he has chosen or accepted himself; b) is free to choose his profession, place of work, as well as his own system of professional qualification. By the same provision, it is stipulated that employees have the right to social protection of work. Article 59 points out that the State, within its constitutional powers and the means at its disposal, aims to supplement private initiative and responsibility with employment under suitable conditions for all persons who are able to work. According to Article 16, these rights are applicable to foreign migrant workers as well. In this respect, the Law on 'Foreigners' states that a foreigner who stays legally in Albanian territory enjoys the right to choose his place of employment, without limitation, except for the cases provided by this law.

The Law on 'Employment promotion' No. 7995 of 20.9.1995, implements the above-mentioned principles by establishing that every person seeking a job or a new job may address the competent employment office for work or work qualification or with its permission, any other employment office. By means of the competent employment office he/she may register to receive the help he/she is entitled to. The same law points out that foreigners shall enjoy the same rights as the Albanian citizens in accordance with bilateral and multilateral agreements that enable the competent authorities to grant residence rights and issue work permit. The ministry shall define the terms under which

the same training is provided to the foreigners coming from those countries that do not have such agreements with the Republic of Albania.

The Committee recalls that "Under this sub-heading, States are obliged to eliminate all legal and de facto discrimination concerning remuneration and other employment and working conditions, including in-service training and promotion. The provision applies notably to vocational training" (Conclusions VII, United-Kingdom). With this in mind, the Committee asks that the next report provide a description of the situation in practice, including information on the measures taken to implement the relevant legal framework and agreements.

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

Article 46 of the Constitution states that everyone has the right to organise collectively for any lawful purpose. In particular, Article 50 points out that employees have the right to unite freely in labour organizations for the defence of their work interests. According to Article 16 these rights are applicable to foreign migrant workers as well. In this respect, the Law on "Foreigners" establishes that a foreigner has the right of organisation, in compliance with the legislation in force for Albanian citizens, which he may exercise when he has a residence permit.

The Code of Labour (No. 7961/1995) provides that no one has the right to a) condition the employment of the employee with his/her being or not a member of a trade union created as defined by law, or with his/her decision to walk out of it; b) to remove or violate the right of the employee because of his/her being or not a member of a trade union created as defined by law, or of his/her participation in a trade union activity by respecting the legislation in force. The same law bans discrimination of trade unions representatives.

The Committee recalls that "This sub-heading requires States to eliminate all legal and de facto discrimination concerning trade union membership (Conclusions XIII-3, Turkey) and as regards the enjoyment of the benefits of collective bargaining, including access to administrative and managerial posts in trade unions". With this in mind, the Committee asks that the next report provide a description of the situation in practice, including information on the measures taken to implement the relevant legal framework.

Accommodation

The National Action Plan for the Decade of Roma Inclusion 2010-2015 refers to the sustainable improvement of housing conditions for Roma communities and the necessity of providing opportunities for Roma to access housing and infrastructure services in compliance with the State standards. The Committee notes that apart from the above-mentioned plan and the amendment process of the Law No. 9232 / 2004 on "Social programs for housing the urban zones residents", the national legal framework does not include any specific provisions to secure for migrant workers lawfully in the territory of Albania treatment not less favourable than that of their own national. The Committee asks whether this is the case and requests that the next report contain a complete description of the situation in law and in practice with regard to accommodation of migrant workers.

The Committee recalls that "It is not enough for a government to prove that no discrimination exists in law alone but that it is obliged to prove, in addition, that no discrimination is practised in fact or to inform the supervisory organs of the practical measures taken to remedy it" (Statement of interpretation - Conclusions III, 1973). With

this in mind, it considers that the information provided in the report is not sufficient to permit it to determine the absence of discrimination of migrant workers with regard to the matters mentioned in the sub-headings of Article 19§4. In this respect, the Committee asks that the next report provide information proving the absence of such discrimination or on any possible measure taken to eliminate it.

Conclusion

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

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

Paragraph 5 - Equality regarding taxes and contributions

The Committee takes note of the information contained in the report submitted by Albania.

According to the report, working foreigners lawfully within in the territory of Albania are obliged to pay contributions (the exceptions to this general principle are listed in the Council of Ministers' Decision No. 114/2008). On this basis, foreigners are entitled to enjoy social and health assistance as Albanian taxpayers. These benefits are granted following the rules established in the Law No. 7703/1993 on 'Social insurance in the Republic of Albania' (as amended) and in the Law No. 7870/1994 on 'Health insurance in the Republic of Albania' (as amended). According to the report, as far as the personal income tax is concerned, the Albanian fiscal legislation provides an equal treatment without any discrimination between Albanian citizens and migrants. In this framework, the report states that in order to avoid double taxation a number of agreements with foreign States were signed by the Albanian Government.

Conclusion

Pending receipt the information requested, the Committee concludes that the situation in Albania is in conformity with Article 19§5 of the Charter.

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

Paragraph 6 - Family reunion

The Committee takes note of the information contained in the report submitted by Albania.

Scope

The new Law on "Foreigners" No. 9959 of 17 July 2008 contains a number of specific provisions referring to family reunion. On this legal basis, a foreigner provided with a residence permit who stays and works in the Republic of Albania may make a request to the local Border and Migration Police to bring his family for purposes of family reunification. The same law stipulates that members of the family are the spouse, children under 18, adopted children or wards of the foreigner, children of his/her spouse, dependent aged parents.

Conditions governing family reunion

A number of conditions are imposed by the law in relation to, inter alia, health insurance, accommodation and means. One of the conditions is that "the applicant foreigner earns his/her living in a regular manner in the Republic of Albania from income or property of his spouse who stays in the Republic of Albania or, in the case of minors, from income or property of their parents".

The European Commission expressed the opinion that the above-mentioned legislation is in compliance with the *acquis*, although some divergences remain, inter alia, about the scope of the right to family reunion¹.

According to the report, the Council of Ministers Decision No. 362 of 01.04.2009 on 'Determining the criteria, procedures and documentation for the entry, stay and treatment of foreigners in the Republic of Albania' contains a number of provisions to implement the legal framework related to family reunion. The Law on 'Family Integration and Reunion of Persons who have been Granted Asylum in the Republic of Albania' No. 9098, of 03.07.2003, refers to the procedures for family reunion of persons who have been granted asylum in Albania. The Law on 'Some Additions and Changes to Law No. 8432 (1998) on Asylum in the Republic of Albania' No.1006 of 26.01.2009, contains a provision on family reunion establishing the obligation to grant protection to the children of persons who have been granted asylum.

As far as the conditions and restrictions of family reunion are concerned, the Committee wishes to recall that: a) "The requirement of having sufficient or suitable accommodation to house the family or certain family members should not be so restrictive as to prevent any family reunion" (Conclusions IV, Norway). "The wording of paragraph 6 of Article 19 ("to facilitate the reunion of the family of a foreign worker") indeed appears to oblige a State which accepts it to take special steps to aid foreign workers to find accommodation, unless conditions on the housing market are such that no steps are necessary (Interpretative statement - Conclusions III, 1973). b) "The level of means required by States to bring in the family or certain family members should not be so restrictive as to prevent any family reunion" (Conclusions XIII-1, The Netherlands).

The Committee asks that the next report provide the requested clarifications as well as pertinent figures about the implementation of the legal framework on family reunion, in particular the number of applications granted / turned down.

Conclusion

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

¹ *European Commission 's Opinion on Albania's application for membership of the European Union*

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

Paragraph 7 - Equality regarding legal proceedings

The Committee takes note of the information contained in the report submitted by Albania.

Law no 78227 of 31 May 1991 "On the legal profession of Albania" requires members of the legal profession to provide legal assistance to Albanian nationals and foreigners on

an equal basis. Law No 9959 of July 17 2008 "On Foreigners" provides that foreigners legally present have equal access to courts, and finally Law no 10039 of December 22 2008 " On legal aid" provides that legal aid shall be available to Albanian nationals and foreign nationals legally present in Albania on an equal basis.

The Committee refers to its interpretative statement in the general introduction and asks for the next report by Albania to state whether domestic legislation makes provision for migrant workers who are involved in legal or administrative proceedings and who do not have counsel of their own choosing to be advised to appoint counsel and, whenever the interests of justice so require, be provided with counsel, free of charge if they do not have sufficient means to pay the latter, and whether migrant workers may have the free assistance of an interpreter if they cannot properly understand or speak the national language used in the proceedings and have any necessary documents translated. Such legal assistance should be extended to obligatory pre-trial hearings

Conclusion

Pending receipt of the information requested the Committee concludes that the situation in Albania is in conformity with Article 19§7 of the Charter.

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

Paragraph 8 - Guarantees concerning deportation

The Committee takes note of the information contained in the report submitted by Albania.

The Committee refers to its interpretive statement in the general introduction.

Deportation is regulated by Law No 9959 of July 17 2008 "On foreigners". Section 77 provides that a foreigner lawfully present in Albania may only be deported if he/she poses a threat to law and order, public safety, national security or where ordered by a court subsequent to a criminal conviction. It further provides that the local regional authority responsible for border and migration shall issue the expulsion order. However Section 75 states that an expulsion order may be issued by the Ministry of the Interior. The Committee seeks confirmation of its understanding that both the Ministry of Interior and authority of the Border and migration police have the power to issue expulsion orders.

The Committee notes that, in 2008, 108 expulsion orders had been issued. It asks for further details on the principle reasons for these expulsion orders, whether they were primarily issued in respect of migrants legally resident or persons unlawfully present in the territory.

Section 71 of the above mentioned law provides a person subject to a deportation order shall have the right to complain to the central authority of the border and migration police within 30 days of being served with the order, he/she may then appeal this to a court within 10 days of the decision of the central authority of the border and migration police. However Section 78 provides that a foreigners of his family members shall be entitled to file a complaint against the expulsion order within 15 days and that the decision of the first instance court may be appealed within 5 days to an appeal court. The Committee asks for clarification of the rights of appeal.

The Committee recalls that under Article 19§8 of the Charter migrant worker's family members, who have joined him or her through family reunion, may not be expelled as a consequence of his or her own expulsion, since these family members may have an independent right to stay in the territory. It asks for information on the rules governing a migrant worker's family members where he/she has been subject to an expulsion order.

The Committee refers to its question in its interpretative statement in the General Introduction.

Conclusion

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

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

Paragraph 9 - Transfer of earnings and savings

The Committee takes note of the information contained in the report submitted by Albania.

It recalls that migrant workers must be entitled to transfer (within legal limits) their earnings and savings including moveable property.

The previous report stated that there were no limits to the amount of savings/earnings that may be transferred out of Albania by a migrant worker. The Committee requested information on the relevant legislation. According to the report Regulation No 70 "On currency activity" approved by the Council of the Bank of Albania on 30 October 2009 provides that the transfer of capital from and into Albania is without restriction for both nationals/non-nationals, residents and non residents,

The Committee asks whether the application of the regulations governing the transfer of capital gives rise to problems in practice.

Conclusion

The Committee concludes that the situation in Albania is in conformity with Article 19§9 of the Charter.

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

Paragraph 10 - Equal treatment for the self-employed

On the basis of the information contained in the Albanian report the Committee notes that there continues to be 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, 11 and/or 12 of Article 19 leads to a deferral under paragraph 10 since the same grounds for deferral as described under the aforementioned paragraphs applies to self-employed workers.

In its conclusions under Article 19§3,4c,6,8 and 12 the Committee deferred its conclusion therefore it must defer its conclusion under Article 19§10 also.

Conclusion

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

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

Paragraph 11 - Teaching language of host State

The Committee takes note of the information contained in the report submitted by Albania.

The Committee previously noted that majority of resident migrants in Albania have Albanian as their mother tongue. However it asked for information on any other migrant groups that do not have Albanian as their mother tongue. No such information is provided it repeats its request for this information.

The report provides information on measures in place to teach Albanian to the children of returning Albanian migrants. It also states that the Ministry of Education and Science facilitates the teaching of the Albanian language to any migrant workers who need it for employment services. The classes will be taught in cooperation with the University of Tirana.

Conclusion

Pending receipt of the information requested the Committee concludes that the situation in Albania is in conformity with Article 19§11 of the Charter.

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

Paragraph 12 - Teaching mother tongue of migrant

The Committee takes note of the information contained in the report submitted by Albania.

The Committee previously noted that majority of resident migrants in Albania have Albanian as their mother tongue. However it asked for information on any other migrant groups that do not have Albanian as their mother tongue. No such information is provided. The report does state that some private schools and educational institutions licensed by the Ministry of Education and Science offer schooling in foreign languages and that these institutions meet the needs of migrants and their children for schooling or language training in their mother tongue. The Committee considers that the information provided in the report is not sufficient to permit it to assess the situation therefore it asks the next report to provide more detailed information.

Conclusion

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