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## **EUROPEAN SOCIAL CHARTER**

10<sup>th</sup> National Report on the implementation of  
the European Social Charter

submitted by

**THE GOVERNMENT OF ALBANIA**

Article 7, 8 and 19

for the period 01/01/2014 - 31/12/2017

Report registered by the Secretariat on

28 February 2019

**CYCLE 2019**



**Report**

**EUROPEAN SOCIAL CHARTER (REVISED)**

**Thematic group “Children, families migrants”**

**Articles 7, 8, 19.**

For the period 01.01.2014 to 31.12.2017

Compiled by the Albanian Government

## **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 Labor 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 labor 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 labor inspectorate with all other necessary data. The authorization is issued under the conditions defined by the labor 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 Labor 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 source<sup>1</sup>, 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 authorized 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.

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<sup>1</sup>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](http://www.ituc-csi.org/IMG/pdf/Final_Albania_cls_report.pdf)

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The Labour Code is amended by Law 136/2015, making some changes to the articles regarding special protection of children, changes related to the transposition of EU directives and some provisions in the framework of Article 7 of the European Social Charter.

Article 98 of the Labour Code prohibits the recruitment of children under the age of 16. Nevertheless, notwithstanding this general rule, the lawmaker has foreseen exceptions regarding children's employment. Article 98 "Minimum age" of 14 years old is changed to 15 years old across the entire text of article. Accordingly, to be subject to counselling and vocational training, the draft law increases the minimum age from 14 to 15 years old. This amendment is crucial in harmonizing with the EC Directive 94/33 on the protection of juveniles at work. The juveniles between 15 and 16 years old can be employed during school holidays only in light work that does not harm their health and formation.

Article 100 stipulates that only adults over the age of 18 may be employed in difficult jobs or posing a risk to their health or personality. The Labour Code assigned to the Council of Ministers the determination of difficult or dangerous jobs and special rules for the duration and conditions of their performance. The Decision of Council of Ministers No. 207, dated 09.05.2002 "On the Determination of Difficult or Dangerous Work" has specified the list of these jobs, as well as the rules for recruitment of employees therein. According to this DCM, the employers are obliged to recruit those employees supplied with professional certificate and medical certificate /attestation/report. The Decision of Council of Ministers has assigned the determination of suitable conditions for these jobs to protect the employees' health and personality, the employer and employee agreement.

Article 102 of the Labour Code provides for the opportunity of employment of children under the age of 15, who are attending compulsory full-time education with a view of carrying out cultural, artistic, sports or advertising activities. For the employment of children in these activities, these conditions must be concurrently fulfilled:

- a) cultural or similar activities should be considered as "light Labour", specifically, after a revision of integral parts thereof, assessing whether they will affect the child's safety, health or development or will affect his /her participation in school, training programs, training or ability to benefit from these forms of training.
- b) The above assessment not only must be conducted in advance by the employer, but it should be also carried out by the Labour Inspectorate, which provides the child with an authorization on a case by case basis, if his employment is compliant with the above conditions.

Rules on working conditions and the procedure for issuing the authorization by the Labour Inspectorate are determined by virtue of a Decision of the Council of Ministers.

The regulation "On protection of children at work" is approved by virtue of the DCM No. 108/2017. The purpose of this regulation is to establish the principles and requirements for the protection of the safety and health of children under the age of 18, against economic exploitation and any work that may harm their health and safety or physical, mental, moral or social development or that may endanger their education or participation in cultural, commercial and similar activities, to guarantee working conditions that are appropriate to their age and health, and to ensure that children are provided education and such a right is not violated because of the work they are doing. The Regulation is fully applicable to any child under the age of 18, who has an employment contract or similar working relationship, without prejudice to the applicable legislation governing occupational safety and health.

During the inspections conducted by SLSSI for the years 2014-2017, no children under 15 years old were reported as employed.

## **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 source<sup>1</sup>, 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.

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<sup>1</sup>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](http://www.ituc-csi.org/IMG/pdf/Final_Albania_cls_report.pdf)

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Articles 99-103 of the LC provide for rules on child Labour, light work, cultural activities or other work, as well as their medical check-up. These provisions reflect the principles and definitions of ILO Convention C182 "On the Worst Forms of Child Labour", 1999, as well as other international aforementioned acts.

Article 99, defining the limitation of employment of children aged 16-18 years old, only in light work, has dealt with in its content the definition of the term "light Labour" by fully transposing the Directive's article for this purpose. In the meaning of the LC, a "light work" is considered the work that because of the inherent nature of the particular duties and conditions in which it is performed, i.e. the accompanying elements during its performance, does not affect the safety, health or development of children or school attendance, in vocational guidance or training programs approved by responsible institutions or the capacity of children to take advantage of this training. We can admit that in itself the above definition also aims, in any case, to guarantee a child who works or is subject to education, formation or training, health and safety at work, physical and psychological development and opportunities to be educated, developed, trained. LC assigned to the Council of Ministers the definition of light work and special rules for the maximum duration and conditions of their performance by children, as well as for adult employees over the age of 18.

Article 100 stipulates that only adults over the age of 18 may be employed in difficult jobs or posing a risk to their health or personality. The LC assigned to the Council of Ministers the definition of difficult or dangerous jobs and special rules for the duration and conditions of their performance.

In its Article 101, the Labour Code prohibits night work for employees under the age of 18, but also for those employees who are declared null and voids on the basis of a medical certificate under the Social insurance Law, treating favourably both of these subjects of legal employment relations, in order to protect their health from a violation due to this cause.

In order to protect the child's health and life, in addition to the imposition of certain prohibitions or restrictions described above, in Article 103 LC has assigned the obligation that before employment the child must complete a thorough medical examination to assess his ability for work, if there are any health problems that could be aggravated by his employment for work. The Decision of Council of Ministers has set out the obligation of the child's medical examination at the moment of recruitment, but also periodically at the expense of the employer, depending on the work performed by the employees aged 16-18 years old<sup>1</sup>. In addition to the children, the obligation of medical examination also applies to the adults up to 21 years of age, i.e. since 18 years old.

Detailed rules for the protection of children at work are provided for in the Decision of Council of Ministers No. 108/2017, which sets out the general employment conditions of the child, jobs they can perform, participation in training or training courses, the duration of their work and their leave, the documentation that the employer has to keep at the enterprise for their employment, notification to the Labour Inspectorate according to the LC requirements etc. A part of this Regulation is also Annex 1, where there is a non-exhaustive list of agents, processes and work in cases where exposure to risks is prohibited.

## **ANNEX I**

### **NON-EXHAUSTIVE LIST OF AGENTS, PROCESSES AND WORK**

#### **I. Agents.**

##### **1. Physical agents**

- a) Ionizing and Non-ionizing radiation<sup>2</sup>;
- b) Working premises with an atmosphere under a high atmospheric pressure, such as pressured containers, hyperbaric chamber, refrigerating chamber, diving, long-time standing, work at a height of over 1.5 meters.
- c) Noises of average daily exposure over 90 decibel;
- ç) Shocks, vibration or motion<sup>3</sup>;
- d) Carrying in arms loads involving risks, especially of the spine<sup>4</sup>;
- dh) Very low or very high temperatures;
- e) Forced body movements and positions;
- ë) Travels, either within the country or abroad, where the enterprise activity takes place;
- f) Mental and physical strain and other physical burdens related to the employee's activity.

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<sup>1</sup> Decision of Council of Ministers No. 742, dated 6. 11. 2003 "On some additions and amendments to the DCM No. 692, dated 13. 12. 2001 "On the special measures of safety and health protection at work".

<sup>2</sup> DCM No.590, dated 18.8.2011 "On approval of the regulation "On protection of employees professionally exposed to ionizing radiations"

<sup>3</sup> DCM No. 841, dated 3.12.2014 "On protection of employees from risks related to the vibration at the workplace". (transposing the EC Directive 2002/44)

<sup>4</sup> DCM No. 523, dated 6.8.2014, on the approval of the Regulation "On minimum requirements of health and safety for the protection of employees regarding the manual labor involving loads" and the repeal of paragraph 15.1 to 15.10 of Annex V of DCM No. 312, dated 5.5.2010 "On the approval of regulation on site safety" (transposing the EEC Directive 90/269)

## 2. Biological agents<sup>5</sup>

The biological agents classified into groups 2, 3 and 4, of the risk provided for in the Decision of Council of Ministers No. 550, dated 27.8.2014 “On the approval of regulation “On the protection of safety and health of employees from the risks related to the exposure to biological agents at work””.

## 3. Chemical agents<sup>6</sup>

1. Toxic, highly toxic, corrosive, explosive and easily flammable substances and mixtures that may cause respectively acute or chronic poisoning, severe or irrecoverable consequences on children’s health, labelled with R 23, R 24, R 25, R 26, R 27, R 28 or R 39 or combinations thereof or R 68 in combination with the phrases R 20, R 21 or R 22 or a phrase R 48 in combination with R 20, R 21, R 22, R 23, R 24 or R 33 or labelled H300, H301, H310, H311, H 330 or H331 or combinations thereof, or labelled H370, H371, H372 or H373.

2. Classified as cancerogenous the categories 1, 2 or 3, labelled R 45, R 49 or R 40 or cancerogenous of the categories 1A, 1B or 2 with statements H350, H350i or H351.

3. Classified as mutagenous<sup>7</sup> the categories 1, 2 or 3, with phrases R 46 or R 68 or mutagenous in reproduction cells of category 1A, 1B or 2 with statements H340 or H341.

4. Toxic for reproduction of category 1, 2 or 3 labeled R 60, R 61, R 62 or R 63 or category 1A, 1B or 2 with statements H360D, H360F, H360FD, H360Fd, H360Df, H361d, H361f or H361fd.

5. Respiratory or skin sensitizers labeled R 42 or R 43 or their combination or labeled H334 or H317.

6. Causing burns or severe burns labelled R 34 or R 35 or H314.

7. Causing the risk of serious injury to eyes labeled R 41 or that may cause serious damage to eyes labeled H318.

8. Harmful: They may cause lung damage, if swallowed, labeled R 65 or may be fatal if swallowed and enter the air route H304.

9. Manipulation with very high liquids labeled R11 or R12 or highly flammable liquids of category 1 or 2 labeled H224 or H225, highly flammable gas categories 1 or 2 labeled H220 or H221, category of highly combustible aerosols labeled H222, substances and mixtures which, when heated, may cause explosions of type A, B, C or D, labeled H240, H241 or H242 explosives with an explosive category of H200 explosive or explosives of subclass 1.1 labeled H201, 1.2 labeled H202, 1.3 labeled H203, 1.4 labeled H204 or 1.5 labeled H205 or A or B organic peroxide labeled H240 or H241.

10. Known and dangerous cutaneous absorption chemical agents.

11. Lead and its components as long as these agents are capable to be absorbed by human organism.

12. Dust of hard wood carcinogenic to humans.

13. Antimitotic drugs.

14. Asbestos

## II. The following processes and works.

1. Production of auramine.

2. Work involving exposure to polycyclic aromatic hydrocarbons present in coal soot, pitch, smokes or dust.

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<sup>5</sup> DCM No. 550, dated 27.8.2014 on Approval of the Regulation “On the protection of safety and health of employees from risks related to the exposure to biological agents at work” (transposing the EC Directive 2000/54).

<sup>6</sup> Law 27/2016 “On the management of chemical substances” and bylaws issued for its implementation.

<sup>7</sup> DCM 520/2014 " On Approval of the Regulation " On the protection of safety and health of employees from risks related to the cancerogenous and mutagenous agents at work” (transporting ECC Directive 2004/37).

3. Work involving exposure to dust, smokes and aerosols produced during baking and electro-refining of copper-nickel materials.
4. Strong acid process in the production of isopropyl alcohol.
5. Production of pharmaceutical substances and hazardous substances, such as cytogenesis or veterinary drugs.
6. Production and handling of equipment, fireworks or other objects /products that contain explosives.
7. Work on lines, electrical appliances or high-voltage.
8. Work with wild or rabid animals.
9. Work at slaughterhouses on industrial level.
10. Work involving the treatment of equipment for the production, storage or application of liquefied or dissolved gases under pressure.
11. Work with bathtubs, tanks, reservoirs or containers containing chemical agents mentioned in point 1.3.
12. Work involving a risk of structural collapse.
13. Work at a pace that is determined by the machine and including the payment based on work performance.

The following are some data from the State Labour Inspectorate

- For the period January-December 2014, during the audits conducted by SLSSI, 237 children were identified as employed in these types of activities:

Manufacturing enterprises, respectively(line manufacturing)	204 children
Other (call-center)	24 children.
H-B-R (hotel, bar, restaurant)	9 children

Children identified in these activities are employed in light work.

- For the period January-December 2015, during the audits conducted by SLSSI, 156 children were identified as employed in these types of activities:

Trade	28 children
Manufacturing enterprises,	104 children
Call Center	23 children
Mine, Quarries	1 child (administration)

Children identified in these activities are employed in light work.

- For the period January-December 2016, during the audits conducted by SLSSI, 226 children were identified as employed in these types of activities:

Manufacturing enterprises, respectively 122 children

Trade	68 children
Call Center	35 children
Transport (agency)	1 child

Children identified in these activities are employed in light work.

- For the period January-December 2017, during the audits conducted by the State Labour Inspectorate and of Social Services (SLSSI), 309 children were identified as employed in these types of activities:

Manufacturing	244 children
Trade	54 children
Call Center	11 children

Children identified in these activities are employed in light work.

There have been no cases of violations related to the employment of young people in hazardous work.

## **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.

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Article 98, point 2, defines that in the meaning of the Labour Code (LC) a "child" is considered any person below the age of 18, thus incorporating a definition of the UN Convention "On the Rights of the Child", which is also enshrined in the content of law "On the protection of children's rights", as well as in the LC.

Considering that the best interest of a child is healthy upbringing, without affecting his physical and psychic and personality development, LC has imposed some restrictions on their employment. Paragraph 3 of this Article provides for that, exceptionally, children between the ages of 15 and 16 can be hired during school holidays only in light work, a very specific period that does not prevent them from being educated. Also children of this age may be subject to vocational counselling and training, according to the rules established by the Council of Ministers Decision, which do not imply that children of this age, who are attending compulsory education on full time basis, can avoid it and be subject to vocational counselling or training<sup>8</sup>. Thus, the provision has specified the age of 15 as minimum age for being subject to a legal employment relationship or any age that the child may have if he or she is attending compulsory full-time education. Exceptions to this rule are only the cases dealt with in Article 102 of the LC.

According to the provisions of the Directive, a legal exception is made in point 4 for the employment of children under the age of 15 or who are over this age (e.g. 16 years old), but who are attending full-time compulsory education, affording employment opportunities for cultural or similar activities, under the conditions provided for in Article 102 of the Code<sup>9</sup>. This provision also provides for the extension of the effects of special provisions of the LC applicable to employees under the age of 18, insofar as possible, for any legal relationships of an employee seeking employment or work in any profession, such as the definition of "light Labour", their list, as well as the rules of maximum working time etc..<sup>10</sup>

In accordance with the aforementioned international acts, Article 102 of the LC provides for the employment of children under the age of 15 who are attending compulsory full-time education with a view of exercising cultural, artistic, sports or advertising activities. For the employment of children in these activities, these conditions must be concurrently fulfilled:

- a) cultural or similar activities should be considered as "light Labour", specifically, after a revision of integral parts thereof, assessing whether they will affect the child's safety, health or development or will affect his /her participation in school, training programs, training or ability to benefit from these forms of training.

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<sup>8</sup> CEACR, in the observation approved in 2010 on the Convention of ONP C138 "On the minimum age" requests from the Government to adopt measures to ensure that only the persons over 14 years of age should be allowed to perform the internship at the enterprise.

<sup>9</sup> For further information, refer to the comment of this Article

<sup>10</sup>As also stipulated by Article 99, point 4 of LC

b) The above assessment not only must be conducted in advance by the employer, but it should be also carried out by the Labour Inspectorate, which provides the child with an authorization on a case by case basis, if his employment is compliant with the above conditions.

Rules on working conditions and the procedure for issuing the authorization by the Labour Inspectorate are determined by virtue of a Decision of the Council of Ministers.

The regulation "On protection of children at work" is approved by virtue of the DCM No. 108/2017. The purpose of this regulation is to establish the principles and requirements for the protection of the safety and health of children under the age of 18, against economic exploitation and any work that may harm their health and safety or physical, mental, moral or social development or that may endanger their education or participation in cultural, commercial and similar activities, to guarantee working conditions that are appropriate to their age and health, and to ensure that children are provided education and such a right is not violated because of the work they are doing. The Regulation is fully applicable to any child under the age of 18, who has an employment contract or similar working relationship, without prejudice to the applicable legislation governing occupational safety and health.

Article 3 of the Regulation provides for rules on the employment of children in cultural or similar activities and specifically this regulation provides for as follows:

1. Performances in cultural, artistic, sports, advertising or modelling activities may be permitted for children on the basis of the authorization of the State Labour Inspectorate on a case-by-case basis.

2. In the meaning of this Article, cultural or similar activities are considered:

a) Artistic and cultural events organized against a material/monetary value, particularly in the field of drama, music, dance and singing;

b) for publicity, promotion or advertising of similar products or facilities, services and for modelling agencies against a monetary value;

c) sports for the general public against a monetary value.

3. In the meaning of this Article, the following activities shall not be considered as cultural or similar activities:

a) Participation in cultural activities organized by amateur ensembles or artistic schools;

b) Cultural, sports or artistic performances of children organized by the school for the general public;

c) Similar activities organized within the educational system at schools and educational institutions;

ç) Participation in competitions of non-commercial, artistic or sports character;

d) After-school cultural, artistic or sports activities of non-commercial character, specially organized for children.

4. The employment of a child under the age of 15, who is attending compulsory full-time education, for participation in activities of cultural, artistic, sports or publishing nature shall be provided with a prior permission issued by the Labour Inspectorate, provided that the activities:

(a) are not harmful to the safety, health or development of children;

b) are not harmful to their school attendance, their participation in training programs or

vocational training, or their capacity to benefit from these programs.

5. The employer is obliged to provide the Labour Inspectorate with all other necessary information before the commencement of activity. The application for individual leave includes the name and surname of the employer or the company's trade name, employer's address, personal data of the child, consent of the legal representative of the child, and description of the place where the activity will be performed and working hours. The Employer is obliged to provide the Labour Inspectorate with all other necessary information.

6. The Labour Inspectorate may, after proper examination, issue an individual permit for carrying out cultural or similar activities by the children, determining the maximum duration of the activity and the terms of employment.

### **Working time for teenagers**

1. The working time of children is limited, as follows:

a) Up to 6 hours a day and 30 hours a week for the work done in the framework of a training system at the enterprise, on the basis of a combined work / training scheme;

b) Up to 2 hours in a school day and 12 hours a week for work performed over a period beyond hours specified for school attendance;

In no circumstances, the daily working time shall exceed 7 hours. This limit may be increased to 8 hours in the case of children who have reached the age of 16;

c) Up to 6 hours a day and 30 hours per week for work performed over a period of at least one week when the school is not ongoing;

ç) Up to 6 hours per day and 30 hours a week for light work done by children who are no longer subject to full-time compulsory education.

1. The time spent for training by a child working under an enterprise training system, based on a combined work / training scheme, shall be counted as working time.

2. In cases where a child is employed by more than one employer, working days and working time are cumulative.

### **Working time for children under 15 years of age**

1. The maximum working time for a child who is not yet attending compulsory education must not exceed 2 hours in a period of 24 hours and 10 hours in a total of 7 days.

2. The maximum working time for a child attending compulsory education shall not exceed:

a) 2 hours per day over a period of 24 hours, during school days or

b) 10 hours overtime in a 7-day period, while the daily working time in such a case shall not exceed 6 hours in total; or

c) 6 hours in a period of 24 hours or 30 hours in a total period of 7 days during school holidays.

3. The working time, as referred to in paragraph 1 of this Article, includes the period required for the preparation of the work activity.

4. Where a child carries out a work activity by more than one employer engaged in commercial activity or similar activities, the working time for a 24-hour period or a 7-day period shall not exceed the maximum working time referred to in point 1 of this Article.

5. In the case of a working time exceeding 2 hours in a 24-hour period, the child shall be provided with an uninterrupted rest period of not less than 30 minutes for the relevant period.

6. A minimum of 14 consecutive hours, a period of rest between work activities should

be applied before a child can start any new work. If the child performs work for 5 consecutive days within a 7-day period, the child shall be granted a period of 2 days' rest.

### **Annual leave**

At least once a year, children between the ages of 15 and 16 should have a four week free leave period from each school and every job.

The children's education in Albania is regulated by Law 69/2012 "On the pre-university education system in the Republic of Albania ", as amended. Article 5, points 1 and 2 of the Law guarantee the right to education of Albanian citizens, foreigners and stateless persons, without discrimination against grounds of gender, race, colour, ethnicity, language, sexual orientation, political or religious beliefs, economic or social status, age, place of residence, disability or other reasons are defined in the Albanian legislation. Point 2 expressly stipulates that public schools of compulsory education and upper secondary education are free of charge.

In pursuance of the law, the main goal of the education policy of the Ministry of Education, Youth and Sports (MEYS) is to provide a high-quality and comprehensive education system.

The focus of the comprehensive educational policy includes the pupils of Roma, Egyptian communities from social strata in need and disabled children.

For each of these categories, MEYS has compiled and approved legal and strategic documents to support and facilitate their education.

Pursuant to the DCM No. 1072, dated 23.12.2015 "On the approval of the National Action Plan for the integration of Roma and Egyptians. 2016-2020 "(NAPIRE 2016-2020), MEYS has issued a number of Instructions and signed cooperation agreements with line ministries for a more comprehensive approach to the education of Roma and Egyptian children, children in street situation and disabled children.

Pursuant to the Cooperation Agreement "On the identification and protection of children in street situation", concluded between the former Ministry of Social Welfare and Youth, Ministry of Internal Affairs and Ministry of Education and Sports, MEYS has taken measures for enrolment in the kindergarten and the nearest school, of children in street situation. An average number of 70 to 80 children identified in street situation return to school annually.

Pursuant to MEYS Instruction No. 21, dated 08.08.2014 "On the increase of pre-school education attendance of Roma children" and in view of the initiative "Every Roma child in kindergarten", the number of children attending preschool education was increased from 23% in 2011 to 66% in 2016.

For the prevention and avoidance of all cases of segregation of Roma children, MEYS has approved the development of Roma language curriculum at school; functioning of classes helping students with learning difficulties and increasing parental representation of Roma/ Egyptian parents in the school boards and councils. MEYS provides free textbooks for all Roma children, Egyptians and children of strata in need, enrolled at school.

In order to facilitate the completion of compulsory education for everyone, MEYS has issued Instruction No. 17, dated 09.05.2018 "On the procedures for compulsory education followed by pupils who have not attended at least two classes of basic education and for part-time basic education". The implementation of the instruction facilitates registration procedures and return to school of children, who, under the circumstances set out in the Instruction, have not attended basic education, as well as provides facilities to pursue basic education from adults who have failed to complete it.

The education of children with disabilities is realized at special schools and institutions and at all kindergartens and schools of pre-university education. Integration of disabled children at kindergartens and pre-university education schools is a priority of MEYS educational policy.

During the last three years the necessary structure of specialized treatment of children with disabilities started to be set up through the establishment and functioning of the interdisciplinary evaluation commission at Regional Educational Directorates/Educational Offices, the introduction of auxiliary teachers in classes for disabled children and the specialized follow-up of the progress of children via the school psycho-social service.

### **Education of Roma and Egyptians**

The Ministry of Education, Sports and Youth is attaching priority to the education of Roma children since early childhood. For this purpose, based on the initiative "Every Roma child in kindergarten" came the MES Guideline No.21, dated 08.08.2014 "On increasing the attendance of pre-school education by Roma children". The access of Roma children to pre-school is increased from 23% in 2011 to 66% in 2016-2017 as a direct outcome of co-operation of this project with the MEYS and other structures.

In 2017, second chance curricula of home-confined children's education and part-time basic education were revised and approved, with the aim of their improvement, maintaining the necessary subjects and adding classes to other key subjects. These plans are already being implemented by educational institutions. Also, the Roma language curriculum for basic education (grades VI-IX) is designed for the first time,.

Some of MEYS priorities to accomplish NAPIRE 2016-2020, include the prevention and avoidance of all cases of segregation or segregation situations; adoption of the curriculum of Roma language; functioning of support classes for students with learning difficulties and increased representation of Roma / Egyptian parents on boards and school parental councils.

At local level, MEYS and its institutions are committed to supplement "RomAlb" portal, which will serve as a safe and fuller source for data in all indicators it includes. The data of 2016 will serve as basis for the next years. 13583 Roma and Egyptian boys and girls were enrolled and attended pre-school education and compulsory education in 2017, while in 2016 there were 12801 Roma and Egyptians registered.

In 2017, 99 Roma and Egyptians worked as educators and teachers compared to 85 working in 2016.

During the academic year 2017-2018, free textbooks were provided to 5328 Roma pupils (37538 textbooks); 60033 textbooks to 7667 Egyptian students, while two years ago free textbooks were supplied to 3205 Roma and 4673 Egyptian students. The duty of educational institutions since the preschool system is to maintain the education plan, which means that all children enrolled at an educational level, shall have regular attendance and shall successfully complete it.

After consultations with civil society, mainly Roma and Egyptians, the MEYS drafted and approved the new Instruction No. 17, dated 09.05.2018 "On the procedures to follow compulsory education followed by students who have not attended at least two classes of basic education and on part-time education in basic education". The new Instruction facilitates the procedures of registration / return to school of children who, under circumstances specified in the Instruction, have not attended basic education for at least two academic years, have abandoned school, are identified as unregistered at school or are children involved in street situation. It also creates facilities for attendance of basic part-time education by adults who have failed to complete their full-time basic education, thus affording the possibility that like children in full-time basic education, they may also be admitted to one or two classes higher than the class for which they possess a school document (or claim to have a school education to be admitted to higher classes in the absence of a school document), being tested by a commission set up at school. According to the new Instruction, abandoning students do not need to pursue the second chance. They are immediately integrated into ordinary classes and are subjected to an individual curriculum to fill the gaps they have due to abandonment or non-registration at school in due time.

Education of children with disabilities is realized at special schools and institutes and at all kindergartens and schools of pre-university education. Integration of disabled children at the kindergartens and pre-university education schools is the priorities of MEYS educational policy. An appropriate unit of specialized treatment of disabled children has started to set up during the last four years, through the establishment and functioning at the Regional Educational Directorate/Educational Office, of the inter-disciplinary commission of the evaluation of disabled children, introduction of the assistant teacher in the classrooms for disabled children, as well as the specialized follow-up of the children's progress via school psycho-social service.

For the academic year 2017 - 2018, approximately 700 teacher assistants were employed in the public pre-university education system, compared to 310 assistant teachers a year before. The ratio of child to assistant teacher this year was 4.9 children / assistant teachers compared to 10.5 children /teachers a year before.

Professional networks of assistant teachers have been built as professional training and development central units and in 2018, accredited agencies have trained over 355 teachers on all-inclusion related topics.

**The number of disabled pupils integrated in normal and special kindergartens / schools**

Academic year	Preliminary education	Elementary education	Lower secondary school	Upper secondary school	Total number in normal schools	Assisting teachers	Special schools	Total disabled pupils
2016-2017	371	1663	940	278	3252	310	659	3911
2017-2018	367	1730	962	392	3451	585	684	4135

Accessibility and creation of developmental areas;

In the academic year 2017-2018 were made 46 interventions in school infrastructure, accompanied with awareness-raising elements with regard to the accessibility for children with disabilities, interventions for the rehabilitation of toilets according to accessibility standards, sport clubs, perimeter yard.

MEYS has supported the creation of the model of 28 developmental spaces for disabled students in non-special schools.

A number of 24 educational facilities were rehabilitated in the basic education, and these facilities were put in use in 2018.

A number of 8 educational facilities were rehabilitated in the secondary general education, and these facilities were put in use in 2018.

A number of 8 new school facilities were put in use in September 2018.

Disabled children were provided access in 32 reconstructions and 8 new constructions, based on the following decisions:

DCM No. 319 dated 12 April 2017 "On the approval of school design standards". pdf

DCM No.159 dated 01.03.2017 On the approval of kindergarten design standards". pdf

All new school constructions are made according to contemporary standards of accessibility.



## **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.

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DCM No. 109, dated 15.2.2017, "On adoption of the regulation for the protection of children at work", was approved, which repealed the Council of Minister's Decision No.384, dated 20.5.1996"On protection of minors at work", as amended.

Furthermore, the State Labour and Social Services Inspectorate (SLSSI) requested to make amendments to this DCM in the analytical plan of draft-projects for 2019, which aims at making it practically applicable by labour inspectors and aims at realizing the most realistic reporting of applicability of the legal provisions that govern the employment of category of employees below the age of 18 years old.

1. For the period January-December 2014, during the audits conducted by SLSSI, 237 children were identified as employed, of which:

31 children aged 16 years old

190 children aged 17 years old

16 children aged 18 years old

For all the children identified is applied the Labour legislation in force on duration of work, weekly and annual holidays.

2. For the period January-December 2015, during the audits conducted by SLSSI, 156 children were identified as employed, of which:

2 children aged 15 years old

34 children aged 16 years old

114 children aged 17 years old

6 children aged 18 years old

For all the children identified is applied the Labour legislation in force on duration of work, weekly and annual holidays.

3. For the period January-December 2016, during the audits conducted by SLSSI, 226 children were identified as employed, of which

3 children aged 15 years old

43 children aged 16 years old

178 children aged 17 years old

2 children aged 18 years old

For all the children identified is applied the Labour legislation in force on duration of work, weekly and annual holidays.

4. For the period January-December 2017, during the audits conducted by SLSSI, 309 children were identified as employed, of which:

44 children aged 16 years old

265 children aged 17 years old

0 child aged 18 years old

For all the children identified, is applied the Labour legislation in force on duration of work, weekly and annual holidays.

## **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.

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Article 111, point 3 of the Labour Code provides for that the Council of Ministers may set a lower salary than the minimum salary at national level for the cases of learning the profession in the system of education and professional training in a double form and here are included students of vocational education during the dual education system. Owing to that during the study they are not employees, are not available to the employer in the same way as other employees, but they are also having study/lesson for the occupation they will obtain, it is thought that their work will be remunerated as determined by DCM, i.e. lower than the minimum salary at national level. This provision was amended by the recent amendments to the Labour Code (2015) from the previous stipulation of this point, upon the recommendation of the Committee of Experts of the revised European Social Charter, as the rule envisaged therein was deemed as discriminatory to young people by setting a lower salary for a work with equal value.

During the audits conducted by SLSSI in the years 2014-2017, no children were identified as employed to learn profession or as apprentices.

## **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.

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The Labour Code is amended by Law 136/2015, making some changes to the articles regarding special protection of children, changes related to the transposition of EU directives and some provisions in the framework of Article 7 of the European Social Charter.

Article 76 of the Labour Code provides for the definition of “duration of work” the time during which the employee is at the employer’s disposal to carry out the work/service. Following the stipulations in the Labour Code on the instruction or the professional formation of the employee, in the moment the work has started, when the work conditions or the technology he has in use are changed, this provision includes the time of professional formation or re-formation in the time of work.

The provision excludes from the time of work:

- a) the time of leave, provided that the employee is not available to the employer, as this time is not considered as productive for the employee and the employer, but as possibility for recovering his / her physical, intellectual capacity.
- b) the time an employee needs to come to the individual workplace and to leave from it.

Notwithstanding these provisions, the Labour Code has assigned the Council of Ministers the possibility of a different arrangement for specific sectors, such as hotel and tourism, printing and broadcasting media, etc.

## **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.

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The Labour Code is amended by Law 136/2015, making some changes to the articles regarding special protection of children, changes related to the transposition of EU directives and some provisions in the framework of Article 7 of the European Social Charter.

According to Article 92 of the Labour Code, pursuant to the principle of contractual liberty, the duration of paid annual holidays shall be determined by collective employment contract or individual employment contract but the duration of annual leave is not less than 4 calendar weeks during the current working year. If the official holiday falls on the annual paid holiday, they are not included in the calculation of the annual vacations and the annual leave is postponed.

Taking into account that the purpose of annual leave is the physical and intellectual recovery of the employee, in Article 94, point 5 (as amended in 2015), in accordance with the stipulation of paragraph 2 of Article 7 of Directive 2003/88/EC "On certain aspects of the organization of working time"<sup>11</sup>, it is foreseen that the annual vacations shall not be replaced by payment.

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<sup>11</sup>Official Journal 299, 2003/11/18, f. 9- 19 Nr. CELEX 32003L0088

During the annual vacations, the employee is entitled the salary as if he was at work and not on annual vacations.

## **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 Labor 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.

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The Labour Code is amended by Law 136/2015, making some changes to the articles regarding special protection of children, changes related to the transposition of EU directives and some provisions in the framework of Article 7 of the European Social Charter.

Forbidden to carry out night work by children is laid down in Article 101 of the Labour Code (as amended).

In 2017 was adopted DCM No.108 dated 15.2.2017 "On adoption of the regulation on the protection of children at work".

The purpose of this regulation is to establish the detailed principles and requirements on protection of safety and health of children under the age of 18 – years old, against economic exploitation and any work that may harm their health and safety or physical, mental, moral or social development, or endanger their education or participation in cultural, commercial and similar activities, to ensure working conditions that are appropriate to their age and health, and ensure that children receive education and shall not be prejudiced this right because of the work they are doing. The Regulation is fully applicable to any child under the age of 18 years, who has entered into an employment contract or relationship of a similar nature without prejudice to the applicable legislation that governs occupational safety and health.

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During the controls conducted by SLSSI, for the years 2014-2017, no children were identified employed during the night shift.

## **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 [0]

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

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The Labour Code is amended by Law 136/2015, making some amendments to the articles regarding special protection of children, changes related to the transposition of EU directives and some provisions in the framework of Article 7 of the European Social Charter.

In order to protect the child's health and life, in Article 103 of the Labour Code is laid down the obligation that before being employed the child should undergo a complete medical check to assess his or her ability to work if the child's health poses problems which could be aggravated when he is employed. The Council of Ministers's Decision stipulates the obligation that the child should be subject to medical check in the moment the child is

employed but also on a periodic basis, at the expenses of the employer, depending on the works that are made by employees aged 16-18 years old.<sup>12</sup> In addition to children, the adults up to 21 years old, i.e after the age of 18-years old, should be subject to the medical check. In 2017 was adopted DCM No.108 dated 15.2.2017 "On adoption of the regulation on the protection of children at work".

The purpose of this regulation is to establish the detailed principles and requirements on protection of safety and health of children under the age of 18 – years old, against economic exploitation and any work that may harm their health and safety or physical, mental, moral or social development, or endanger their education or participation in cultural, commercial and similar activities, to ensure working conditions that are appropriate to their age and health, and ensure that children receive education and shall not be prejudiced this right because of the work they are doing. The Regulation is fully applicable to any child under the age of 18 years, who has entered into an employment contract or relationship of a similar nature without prejudice to the applicable legislation that governs occupational safety and health.

Articles 5 of the regulation is about "Health surveillance" which provides for:

Before starting the employment relationship the “child” employee should submit to the doctor the report issued by the forensic commission, wherein it is stated their ability to work.

During the employment relationship the Employer shall provide to the “child” employee complete "health" surveillance on their health condition, adapted based on the risks associated with the work they perform. Such surveillance will be conducted at least once a year. Depending on the processes and works or in the event the works are carried out in the conditions of *force majeure* and for which there is a special regulation under the legislation in force, the health surveillance shall be conducted at least once every 6 months.

The employer shall cover the expenses for the periodical medical checkups of children employees and ensure the confidentiality of any data related to their condition.

Prior to any assignment in conducting light works, children and adults up to 21 years of age are entitled to assessment of their health and ability to work free of charge, except the cases when they work in the works prohibited for exceptional reasons.

The data of the periodic medical check are documented in the occupational health file, according to the stipulations in the legislation in force and national practices on occupational health surveillance and the legislation in force on the protection of personal data.

The data of preliminary and/or periodic medical check for children employees shall be made available to the person that exercises the parental responsibility of the child.

DCM No. 639, dated 07.09.2016 "On the rules, procedures and types of medical examination tests that will be carried out depending on the work performed by employees and how the medical service at work is performed" has been approved. This DCM is intended for all employees, including children below the age of 18 - years old.

Following the inspections carried out, it transpires that the 6-month interval of the periodic check is respected.

1. For the period January-December 2014, during the audits conducted by SLSSI, 237 children were identified as employed, of which:

193 children provided with medical examination

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<sup>12</sup>Council of Ministers’ Decision No. 742, dated 6.11.2003 “On some addendum and amendments to Council of Ministers’ Decision No. 692, dated 13.12.2001 “On occupational health & safety special measures”.

44 children not provided with medical examination

2. For the period January-December 2015, during the audits conducted by SLSSI, 156 children were identified as employed, of which:

130 children provided with medical examination

26 children not provided with medical examination

3. For the period January-December 2016, during the audits conducted by SLSSI, 226 children were identified as employed, of which:

205 children provided with medical examination

21 children not provided with medical examination 18.57%

4. For the period January-December 2017, during the audits conducted by SLSSI, 309 children were identified as employed, of which

282 children provided with medical examination 81.43%

27 children not provided with medical examination 18.57%

The cases identified when no medical examination was conducted, have occurred prior to the start of work for, which inspectors have taken the measure of administrative punishment, warning or suspension until such examinations have been carried out.

## **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 sources<sup>1</sup> 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 organizational-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. Specialized 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 penalized 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 Rights<sup>2</sup> 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, pickpocketing, 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) report<sup>3</sup> 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”)<sup>4</sup>, 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.

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Law 18/2017, "On the Rights and Protection of the Child", which came into force in June 2017 raises the child protection system to another level. For the first time, it is clearly stipulated the meaning of the protection of the child, by clarifying the protection measures that can be used by employees who work with children, when they identify cases of children who are in an uncertain situation due to violence abuse, neglect or exploitation.

Article 23 of the Law provides for protection against all forms of violence, including special protection for certain category of children, which may be imposed on any child in such a situation requiring protection. The law provides for intervention and the steps that are taken to protect the three categories of children, specifically the abused, violated, neglected children, children that are economically exploited and children accused of having committed criminal offenses but are under the age of criminal responsibility.

The parents of the child or the legal guardian shall, in cooperation with the health care institutions, educational institutions, child protection structures and social welfare service providers, take all the necessary measures to enable the physical, psychological and emotional

rehabilitation and social integration of the child victim of violence, neglect, exploitation or abuse.

Paragraph 4 of Article 23 of Law stipulates that corporal punishment or punishment of any other form entailing consequences on the physical and mental development of the child shall be prohibited.

Article 26 of Law provides for that the child shall be protected from trafficking, sale and any form of sexual exploitation and abuse, including illegal sexual activity, child prostitution or other illegal sexual practices, exposure, display or involvement in pornographic materials or sexual abuse of children according to the provisions of the Criminal Code and other acts in force.

Pursuant to Law 18/2017 "On the rights and protection of the child" with the support of the OSCE Presence in Albania, has been prepared the draft decision "On the procedures for the identification, immediate assistance and referral of economically exploited children, including children in street situation", which aims at establishing the rules and procedures for the identification, immediate assistance and referral of children exploited in the formal and informal sector, including children in street situation. It provides for the roles, responsibilities, timelines and interaction between the institutions responsible for the identification, immediate assistance and referral of exploited children, including children in street situation.

The National Action Plan for Combating Trafficking in Persons 2018-2020 aims at minimizing the phenomenon of trafficking in human beings, as a continuation of previous plans. Given the findings and recommendations from the monitoring of the previous strategy, the Action Plan aims at improving the functioning of a comprehensive system through strengthening the identification, protection and reintegration of victims of trafficking.

Pursuant to DCM No. 582, dated 27.07.2011 "Standard operating procedures for the identification and referral of victims and potential victims of trafficking", the General Directorate of the State Social Service and 12 Regional Directorates of Social Services in 12 Districts are directly involved in the process of identification and referral of VT (victims of trafficking). The activities for the beneficiary at the centre have aimed at organizing group work, cooperation and increase of professionalism, which directly affects the quality and success of the aid package provided to the beneficiaries. All cases have been treated the same, and has never been demonstrated any division of ethnicity, race or nationality.

Furthermore, the Ministry of Interior addresses the issues of integrated border management and the issues on trafficking in human beings. Among the migration policies of the Ministry of Interior, are emphasised the National Strategy on Integrated Border Management 2014-2020 and the Strategy and Action Plan against Trafficking in Human Beings 2014-2017.

Based on the national study on the children in street situation in Albania, which was conducted in April 2012, and pursuant to this agreement, was drafted the National Action Plan "On the identification and protection of children in street situation 2015-2017". This plan was prepared following a comprehensive inter-sector consultation process, which involved actors from central and local institutions and partner organizations, and is based on the legal framework that governs the coordination of work on issues of the protection of the child. The National Action Plan aims at protecting children from all forms of abuse, exploitation and

neglect through a complete and integrated inter-sector intervention on the protection of children and strengthening their families.

The Action Plan for the Protection of Children from Economic Exploitation and Children in Street Situation 2018-2020 is being prepared.

On the other side, with the adoption of the new Law No. 121/2016 "On the social care services in the Republic of Albania" reformation of the system of social services aims at establishing new community-based services, also as competence of the local government pursuant to Law "On Local Self-Government".

Establishment of the Social Fund, pursuant to Law 121/2018, already approved by the Council of Ministers' Decision (2018), aims at creating the financial mechanism to ensure the provision of social care services within the approved minimum national standards, in support of efficiency of national and local budgets, through improvements of the planning process and implementation of the social care service. It is aimed at regulating and providing social services in a way that will enable to cover the needs of beneficiaries in time and provide the services that help vulnerable groups.

Furthermore, pursuant to Law on Services and Law on Local Government, were drafted social plans in 10 Municipalities in 2017 and they are ongoing in other municipalities as well. Following the assessment of the needs by all municipalities, also with support of the Social Fund, it is planned to establish multifunctional community services, as closest possible to the individual/families in need, including prevention and reintegration of victims of trafficking, sexual abuse, including the illegal sexual exploitation, exploitation of the child for prostitution or other illegal sexual practices.

### **Statistical data on children**

The Government supports 4 public and non-public centers intended for the reception and reintegration of victims/potential victims of trafficking and each year finances part of the functioning of the protective services for them.

The National Reception Center for the Victims of Trafficking has treated about 198 victims of trafficking / potential victims of trafficking since 2012 and in 71 cases the victims were below the age of 18 - years old. While the other 3 centers that treat victims of trafficking / potential victims of trafficking have addressed 398 cases in the period 2012-2018.

As to the treatment of children, at the moment they are accommodated in the center, they all receive, without exception, the service of a psychologist and the medical and legal service. The plan of their integration services includes: registration in nursery schools, kindergartens, schools and regular attendance to thereof. Meanwhile, various awareness, entertainment and relaxing activities are developed in the premises of the center, in order to develop their social skills and abilities.

It is noted that the total number of the cases managed on the children that needed protection was increased considerably in 2017 by 16.3% compared to the year 2016. In 2017, the economic problems were the main concern of children that were taken under protection CPUs. In 2017 were treated 672 cases compared to 588 cases treated in 2016. Therefore, has been noted an increase compared to the previous year. Economic problems are often

associated with other issues, such as difficulties to register with the civil status, parental care, and health care. Identifications were made by field teams in each municipality.

In 2017, there were in total a number of 223 child protection officers (CPOs), therefore marking an increase in the number of personnel. The information and daily contacts with the Child Protection Unit transpire that has been increased the proactive work of CPUs, that have managed to identify more cases of children in economic difficulties and are managed as cases by helping their families to face the economic poverty situation.

Objective 3 of the National Agenda for Children's Rights 2020 provide for the drafting of local plans for the protection of children, as part of local social plans.

The State Agency for the Rights and Protection of Children, with the support of OSCE Presence in Albania, with the support of Save the Children, has coordinated the process of drafting local plans for the children in street situation and is monitoring their implementation in the municipalities of Durrës, Elbasan, Fier, Shkodër, Korçë and Vlore. Furthermore, since May 2017 Arsia Organization with the support of Save the Children provides direct support to Child Protection Units for the identification in terrain and management of the cases of children in street situation.

In 2017 were active 29 field teams, which identified 484 street children, out of which 251 cases of children are being managed.

The field teams for the Identification, Help and Referral of Children in Street Situation are set up at the institution of the Social Services Directorate in Municipality and will consist of at least 2 social workers: 1 child protection officer at the local unit and 1 experienced social worker appointed by the Department of Social Services in Municipality and / or a social worker from civil society organizations.

### **Children in street situation**

Pursuant to the Cooperation Agreement "*On the identification and protection of children in street situation*", entered into between the Ministry of Social Welfare and Youth, Ministry of Internal Affairs and the Ministry of Education and Sports, MEYS, through the local education units takes measure for enrolment in kindergarten and to nearest school, children in street situation, in accordance with the legislation in force; provides structures and psychological and social services in schools to assist children in street situations; cooperates with child protection units and non-profit organizations to return to school children in school situation; monitors the implementation of all the measures to provide textbooks and school supplies for children in street situation. Approximately 70-80 children identified in street situation are returned to school annually.

### **The 4-ministerial agreement on the identification and enrolment in school of every child**

Following the initiative "Every child in school", was worked on the implementation of the Joint Order (MES, MoI and MoH) No. 2, dated 05.01.2015 "On the approval of the regulation for the implementation of the Cooperation Agreement dated 02.08.2013 "On the identification and registration in school of all mandatory school-age children", and two years pilot was carried out in Durres and Elbasan Municipalities. During the pilot, were organized over 20

roundtables, 10 trainings, 72 interviews, 2 conferences etc. The pilot identified that a number of 30 children do not attend school annually, and was worked to register them in school.

**MEYS involvement and contribution for the education of victims of trafficking begins with the establishment of a legal framework that governs the whole process of their education.**

These are documents or instructions that serve the education of victims of trafficking:

- Instruction No. 29 of the Minister of Education and Science, dated 02.08.2013, "On the procedures for attending part-time basic education";
- Instruction No. 31 of the Minister of Education and Science dated 02.08. 2013, "On the procedures for attending basic education for the pupils who have not attended at least two basic education classes".

According to this instruction, have the right to attend full-time education, within the age of compulsory education, children who, for various reasons:

- a. have reached at least the age of 8 - years old and were not registered in the first grade or have quitted;
- b. have not completed a basic education grade and were not registered in that grade for the following year;
- c. have completed a basic education grade and were not registered in at least two consecutive academic years;
- d. have failed a degree and did not repeat that degree for at least two consecutive academic years.

- Instruction No. 38 of the Minister of Education and Science dated 13.08. 2013. "On the education of school age individuals in social care institutions";
- Instruction No. 16 of the Minister of Education and Sports dated 03.08.2016, "For the academic year 2016-2017 in the pre-university education system".
- Based on this legal framework, in 2016 were treated victims of trafficking in Durrës and Vlora in cooperation with relevant institutions and they benefited education and free textbooks. At the beginning of the academic year 2016-2017, victims of traffic that were in school age were treated as a separate category and they were favoured as to the registration to school, were provided with free textbooks of the basic education.

**Involvement of victims of trafficking/potential victims of trafficking in the curricula on the training and licensing of teachers, starting from pre-school education until the upper secondary school education:**

- MEYS through the Education Development Institute (EDI) has enriched the teacher training curriculum with new modules such as "Education and formation of teachers for all - inclusive Profile of all - inclusive teacher" approved by the Minister's Order No.195, dated 25.04.2016, which is used for the annual training of teachers, in the framework of their continuous professional development.
- MEYS has cooperated with IOM to draft a curriculum module for the prevention of trafficking in human beings in pre-university education institutions, as well as a curriculum material to assist teachers to address with students special topics related to the risk of trafficking and exploitation of persons in the course of Citizenship and Social Education.
- Inter-sector trainings were conducted, attended by about 100 educational workers, mainly social workers, school psychologists and employees of regional educational

directorates, who were trained by specialists of education, state police, anti-trafficking, labour inspectorate, etc. The trainings aimed at enabling educational workers to identify potential victims, prevent trafficking, referral, and assistance to victims. School psychologists refer to child protection workers cases of trafficking. School psychologists also attend the interviews with abused children that are held in police premises.

- During the training, the workers of education identified the important indicators for the identification of victims of trafficking/potential victims of trafficking in school premises, which are also part of Standard Action Procedures.

## **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.

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Maternity income is paid to the insured woman for the pregnancy and childbirth when she has a 12-month insurance period for any case of benefit. The social insurance scheme does not provide benefits in cases when the person has not paid social contributions. Since it constitutes a contributory scheme, non-contributing persons shall not be entitled to benefit from this scheme but will be treated by the economic assistance scheme if they meet the conditions according to the latter.

With the amendments provided for in law No.7703, dated 11.05.1993 "*On Social Insurances in the Republic of Albania*" as amended, the woman should have a 12-month insurance contribution period to be provided a maternity leave. The rule of insurance period excludes the case when the right to payment for the next childbirth occurs within 24 months from the date when the previous child was born.

This condition is assessed for the employed, employer or self-employed woman. However, it is considered necessary that the woman has realised this 12-month insurance period in total for the entire duration of the insurance until the moment she is created the right to a maternity leave.

Furthermore, a woman who has over 12 months of insurance period in total is considered insured even when 35 days before childbirth has been provided with at least 1-month insurance during the pregnancy period.

According to international conventions, the minimum contribution period is 14 weeks, while according to Albanian legislation this period is 52 weeks.

The benefit is on a contributory basis and while we have the benefit for a longer period of time, the contributions must be for a longer time.

## **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.

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The Labour Code has been amended by Law 136/2015 by making some amendments to the Articles on the special protection of pregnant or breastfeeding women, amendments that are related to the transposition of EU directives and some provisions within the framework of Article 7 of the European Social Charter.

Pursuant to Article 146 of the Labour Code, the employer who has terminated the contract for abusive reasons is obliged to give the employee a claim of up to one year's salary. The court may order compensation up to a maximum of one year, having taken into account all the circumstances, such as age, social status, dependents, the possibility that he has a new job, the economic situation, the financial obligations he may have (credit, payment) his psychological condition, the duration of his employment with this employer. The worst the worker's situation in the above components is the greater the compensation.

Article 146, paragraph 3, provides for the employee in the public administration to return to the previous place of work where there is a final court decision and the employer is obliged to enforce this decision.

In these cases, it should be taken into consideration that the employment contract can not be changed during the period when the employee is benefiting the maternity payment from social insurances in one of its essential terms, i.e the place of employment, as this change of contract would be considered null and void under Article 147 of the Labour Code. In each case, the employer should start the procedures for the transfer of the employee to another equivalent place after the employee is returned from the maternity leave. Furthermore, this point of the provision recognizes the right of a woman after her return to work to benefit any improvement in the employment conditions she would have benefited during her absence. Hence, if during this period the employer has improved the conditions of occupational safety and health, daily working time, salary / remuneration etc., the woman who has been with a maternity leave shall also benefit these rights.

Following the obligations stipulated in the Labour Code for holding a job or for terminating an employment contract, during the period of benefiting temporary disability under the social insurance legislation<sup>13</sup>, point 2 of this article provides for that in the cases when the employer terminates the contract, when the woman is working while being pregnant, or returned to work after the childbirth<sup>14</sup> the employer is responsible to certify that the dismissal reason was not either pregnancy or childbirth but may have been other reasons. If the employer does not prove that the contract was terminated for other reasons, the termination will be considered null and void.

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<sup>13</sup>Medical reports during pregnancy / maternity income

<sup>14</sup>According to Article 105 of the Labour Code

Despite the fact that the Labour Code and the social insurance legislation provide for a compulsory period of maternity leave, and a period considered to be the employee's right to enjoy it, point 1 of Article 107 considers protected the entire period during which the employee pretends to benefit income from social insurance because of the childbirth of adoption (i.e maximum up to 365 calendar days for the biological mother and up to 330 days for the adoptive parent).

If during this period, the employee is notified the termination of the employment contract, and the employer does not prove that there have been other causes, this termination is considered null and void. This stipulation should be interpreted interlinked with the provisions of Article 147 of the Labour Code. If the termination occurred during this period, the contract shall be considered in force and the parties should respect the contractual obligations.

The provision stipulates the suspension of the notification period for the termination of the employment contract if it was notified before the beginning of the 35/60 days of the pre childbirth (protected period) and when the notice period under Article 143 of the Labour Code was not completed. Hence, for the suspension, both these conditions must be satisfied at the same time.

The notification period will re-start (for the remaining period of the employee due to seniority of work with the employer and the provisions of Article 143) after the employee returns to work.

## **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.

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According to the Labour Code the employer means both the public and private employer. This provision is for women employed both in the public and private sector.

## **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 [+]**

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According to the Labour Code the employer means both the public and private employer. This provision is for women employed both in the public and private sector.

The recent amendments to the Labour Code by Law 136/2015 and in transposition of Council Directive 92/85/EEC, "On the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding"<sup>15</sup>, but also in order to protect the health of the mother and the child, Article 108 provides for the protection of pregnant woman and the mother who has given birth to a child, until the child is one year old.

First, this provision has as its subject the pregnant woman and the mother who has given birth to a child up to 1-year-old.

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<sup>15</sup>No. CELEX: 31992L0085; Official Journal L348, 1992/11/28, page 1-7

Secondly, the provision does not categorically prohibit the night work of these employees.

Thirdly, the risk assessment, the impact that night work may have on the safety and health of a woman and child, cannot be done by the employee or employer, but must be verified with a medical report by the competent body under the social insurance legislation.

The employer's order that the employee works at night may be based only on this assessment, otherwise any order would be unlawful and would not be considered as a breach by her side of the obligation of persuasion under Article 23 of the Labour Code.

Furthermore, point 2 of the provision provides for the employer's obligations in cases when a pregnant woman and/or a woman breastfeeding decides to return to work 63 days after the childbirth and becomes unsuitable to work at night but is suitable to work during the day. In these cases, the Labour Code provides for that unsuitability cannot be assessed by the subjects of the employment contract, but must be verified by a medical report, which may specify the obligation to work only during the day.

Based on this assessment the employer is obliged to transfer the employee to:

- a) a similar work;
- b) work that should be appropriate for the employee, based on the education, professional skills, family circumstances;
- c) a work that is done during the day.

Therefore, the work to be provided to the employee must meet the above three requirements and if this is impossible to be technically and/or objectively realised, the employee shall be entitled to continue to enjoy the benefits under the applicable social insurance legislation for the entire time that is necessary to protect her and/or the child's safety and health.

Since the provision has no prohibitive-mandatory character for the night work of pregnant women or mothers who have given birth to a child that is up to 1-year-old, or a woman breastfeeding, it has assigned the Council of Ministers to determine the special rules for the cases when night work is allowed for these subjects.

## **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 33 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 [0]

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

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The Labour Code is amended by Law 136/2015, making some changes to the articles regarding special protection of pregnant women or women breastfeeding, changes related to the transposition of EU directives and some provisions in the framework of Article 8 of the European Social Charter.

According to the Labour Code the employer means both the public and private employer. This provision is for women employed both in the public and private sector.

*Measures taken by the employer for pregnant women and women breastfeeding*

When exposure to hazardous agents, processes or working conditions poses a risk to safety or health, or affects pregnancy and breastfeeding, the employer must take measures to avoid any risk or adapt the workplace to the employee.

If for technical and / or objective reasons the measures provided for in paragraph 1 of this Article cannot be applied, the employer should temporarily adapt the working conditions and/or working hours to the employee until the exposure to those risks is eliminated.

If for technical and / or objective reasons the measures provided for in the preceding paragraph cannot be taken, or cannot be required to apply them on justified and proven grounds, the employer should provide that the employee is transferred to another job, equally assessable.

If for technical and/or objective reasons the employer cannot take the measures provided for above or cannot be required to apply them on justified and proven grounds, the employer must give a paid leave to the woman employee until the risk is avoided

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## **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 Labor, 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" 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). 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 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 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' set 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 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.

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**The legal framework regarding the implementation of this provision**

The migration policies pursued by the Ministry of Interior in relation to paragraph 1, Article 19, are expressed in the National Strategy on Integrated Border Management 2014-2020 and the Strategy and Action Plan against Trafficking in Human Beings 2014-2017.

The Albanian legal framework, as amended in recent years also in the spirit of European Union legislation, aimed at building a stronger and more coherent migratory policy. Furthermore, the normative acts under its implementation were improved in terms of the procedures on travel documents, visas, employment, residence, family reunion ... etc. In this period were approved the Law No.74, dated 14.07.2016, "On some additions and amendments to Law No.108/2013 "On foreigners", Law No.71/2016, dated 07.07.2016, "On border control" and Council of Ministers' Decision No. 513, dated 13.6.2013 "On the determination of the criteria of procedures and documentation on the entry, residence and treatment of foreign citizens in the Republic of Albania", as amended.

The following orders and instructions constitute part of migratory norms:

- Joint Instruction No. 264 dated 11.01.2016 on the cooperation of the structures of the Ministry of Interior, Ministry of Foreign Affairs and State Intelligence Service, on the procedure for issuing visas to foreign citizens;
- Instruction of the Minister of Interior No. 293, dated 04.06.2015, on treatment of foreign citizens with irregular residence in the territory of the Republic of Albania;
- Instruction on the cooperation of the structures of the Ministry of Interior and SIS on the procedures for treatment of foreign citizens with regular residence in the territory of the Republic of Albania;
- Joint Order of the Director of State Police and State Social Service No. 332/3, dated 7.3.2014 "*On taking measures for the reception and social treatment of unaccompanied minors who are returned / readmitted from other countries*".

In terms of preventing the abuse of the visa-free regime with the EU, our country has achieved a number of results and has taken a number of measures to prevent the asylum seeking phenomenon of Albanian citizens in Schengen / EU countries, as follows:

- strengthened the control of Albanian citizens that cross the state border;
- satisfied the conditions for travel to EU / Schengen countries. Approval of Order No. 805, dated 01.08.2017 of the General Director of State Police;
- detailed control for minors who travel abroad;
- notarial declarations of juveniles at the border;
- increased communication and exchange of information especially with the countries affected by abusive asylum seeking of Albanian citizens, and
- intensified return operations of Albanian citizens, in cooperation with FRONTEX, with Albanian escort (at our request).

Furthermore, the measures have consisted in sensitizing and raising citizens' awareness on the consequences that result when the deadline has expired and from the abusive asylum seekers, in enhancing communication and exchange of information, especially with the countries affected by abusive asylum seekers of Albanian citizens, increasing the control for filling out the required documentation for the movement in the Schengen area, as well as identifying and punishing unlawfulness, either the agencies or persons involved in the production of One-Stop-Shopfeit documents for the purpose of asylum seeking and also the cases of illegal

crossing of border. For this purpose, information leaflets were produced and distributed and posters were placed with information on the rights, obligations of Albanian citizens during their movement in the Schengen area, as well as on the punishment in the event the obligations are violated. Media awareness campaigns were organized (advertising spots, chronicles, shows) with information on the rights, obligations during the movement in the Schengen area and sanctions in the event the obligations are violated. The official website of the State Police and the Ministry of Interior shows the additional rules for the movement in the Schengen area, both for adults and for minors.

If we refer to the reports prepared by the countries of the European Union and the information sent by the representatives of the embassies of our country in the Schengen area, in 2017 the number of asylum applications of Albanian citizens in these countries decreased considerably.

In October 2017, the Ministry of Interior, in cooperation with IOM Tirana and other responsible institutions, started implementing the project "*Preventing uncertain migration from Albania to EU Countries*". In the framework of this project, awareness raising meetings and workshops were organized in the regions of Durrës, Dibër, Kukës, Elbasan, Shkodër, Korçë, Vlorë, Fier and Gjirokastër with the participation of various agencies and institutions such as the district council, municipalities, child protection units, border and migration and anti-trafficking police authorities, State Social Service, National Employment Service, Regional Education Directorates, Regional Health Directorates, civil society representatives, teachers, pupils, and were organized meetings and door-to-door visits.

The statistics on the implementation of this project are shown as hereunder:

- about 900 persons from different structures participated in the activities in 12 districts, 75 persons (about 75 individuals attended 4 meetings in each district);
- about 360 persons attended workshops with Regional Committees and Technical Roundtables, including local government units, other governmental agencies and civil society actors;
- about 360 teachers attended workshops in 12 regions;
- approximately 400 students attended the information sessions in 12 regions;
- about 50.000 leaflets were distributed (4,150 leaflets in each region);
- 48 workshops / information sessions were held in 12 counties, 4 workshops organized with:

Members of Regional Anti-Trafficking Committees and Technical Roundtables, including representatives from: District Councils, Municipalities, Child Protection Units, State Police Officers, State Social Service, Regional Employment Office, Regional Directorate of State Social Service, Regional Educational Directorates, Regional Directorates of Public Health, Regional Labour Inspectorates, civil society, representatives from district prosecutor's offices; civil society; teachers; meetings with students of upper secondary schools. Meetings were also organized at border crossing points as well as in public places.

The main legal act that governs the issue of emigration of Albanian nationals for employment purposes is Law No.9668, dated 18.12.2006 "*On the Emigration of Albanian Citizens for Employment Promotion*", as amended. Point 1 and 2 of the Law specify the obligation of Albanian state authorities and private employment agencies to inform Albanian citizens who will emigrate for employment before they leave. This obligation also extends to Albanian nationals that return from emigration.

During this period of time and pursuant to this law, the Ministry of Interior has exerted its duties and responsibilities on border control, to ensure the regular emigration of Albanian citizens, and take measures to prevent and eradicate trafficking in human beings, treatment with priority to supply with the required documentation the Albanian nationals that seek to emigrate, monitor the registration and border control system for Albanian emigrants and exchange of information on the number, states and length of stay of Albanian emigrants.

Reintegration of Albanian citizens returned and their family members has been in the focus of the Albanian institutions that have continued to implement the measures laid down in the Action Plan of the Strategy on Reintegration of Returned Albanian Citizens 2010-2015. The Strategy defined the reintegration mechanisms that addressed the needs of Albanian citizens returned voluntarily. Its vision was to ensure a sustainable return to migrants through the support of the reintegration process, regardless of the form of return.

A number of 36 Migration One-Stop-Shops were established all over the country. They are in regional and local employment offices and have the duty to inform Albanian citizens who want to emigrate for employment purposes and Albanian nationals who return from emigration to facilitate their reintegration in the country after they return. Migration One-Stop-Shops interview the returned Albanian citizens that appear before the One-Stop-Shop, provide information on public and private services in accordance with the needs identified and refer to public and private services as well as specific civil society projects, in accordance with the needs of the returned Albanian citizens. Only a number of Albanian nationals returned from emigration appear before Migration One-Stop-Shops.

**Table 1. Returned Albanian citizens registered with Migration One-Stop-Shops in years 2014, 2015, 2016, 2017**

Year	Number of returned Albanian citizens
2014	834
2015	520
2016	289
2017	291
January – June 2018	202

*Source: Migration Profile 2016 and 2017 in the Republic of Albania; Ministry of Finance and Economy, National Employment Service.*

**Table 2. Returned Albanian citizens who have benefited from reintegration programs in years 2014, 2015, 2016, 2017**

Year	The number of Albanian citizens professionally formed	Employed	Information, referral
2014	170	22	<ul style="list-style-type: none"> <li>- 70% for employment</li> <li>- 24,5% for professional formation</li> <li>- 12% support with incomes</li> <li>- 26% information on medical services</li> <li>- 5% for opening a business activity</li> </ul>
2015	33	130	

2016	48	142	- 53% for employment - 31% for professional formation - 16% support with income - 22% information on medical services
2017	47	97	- 62% for employment - 24% for professional formation - 7.5% support with income - 12% information on medical services
January – June 2018	11	61	- 51.4% for employment - 43% for professional formation - 13% support with income - 17.3% information on medical services

*Source: Migration Profile 2016 and 2017 in the Republic of Albania; Report on monitoring the strategy for the reintegration of returned Albanian citizens 2010 - 2015; Ministry of Finance and Economy, National Employment Service.*

In implementation of the legal and strategic documents for the reintegration of Albanian citizens that are returned, work was carried out on these directions:

- Improvement of the existing legal basis on the support for reintegration;
- Establishment and improvement of the institutional framework for supporting the reintegration of Albanian citizens returned;
- Increase of capacities of the structures involved in the reintegration of returnees in Albania.

Albanian citizens that are returned at the border have had access to transportation services from the Border Crossing Points (BCPs) to the nearest urban centres and the vulnerable groups have had access to the nearest residential centres. During 2010-2015, about 100.000 returned Albanian citizens benefited from this service.

Information is provided at border crossing points (BCPs) and during the interview of persons readmitted from other countries, in view of the reintegration of returnees. During the period 2013-2015, were distributed about 80.280 leaflets. During the period 2010-2015 were prepared information-related posters to be placed at border crossing points. About 100 large posters and 350 small posters with orientation information for returned Albanian citizens are placed at BCPs.

Furthermore, were satisfied the conditions at BCPs approved for the readmission of citizens that return from the police of other countries, for their accommodation and interviewing. The returnees at border crossing points are satisfied the needs for food, water and medicine. During the period 2010-2015, about 86.500 returned Albanian citizens were supplied with these services.

The foreign citizens that live in Albania (beneficiaries of international protection, EU citizens and third country nationals, etc.) are entitled to a wide range of services, depending on the residence motive.

Department of Border and Migration under the State Police (organized at central and local level), is the responsible authority for dealing with the foreigners that enter, transit or stay in the territory of the Republic of Albania.

This authority has the responsibility to control foreigners and make decisions as regards the visa application procedures of foreigners who seek to enter the Republic of Albania, border control, by applying the conditions and criteria for the entry, stay and transit in the Republic of Albania and informing foreigners about the procedures, criteria and documentation required for obtaining a residence permit as well as providing them with a residence permit, extension of residence... etc.

In complying with the legal obligations the public institutions provide foreigners with protection against any form of discrimination throughout the entire process of integration in the society.

## **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 Labor, 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.

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Reintegration of returned Albanian citizens and their family members has been in the focus of Albanian institutions that have continued to implement the measures laid down in the Action Plan of the Strategy on Reintegration of Returned Albanian Citizens 2010-2015.

The strategy stipulates the reintegration mechanisms that apply and address Albanian citizens who return voluntarily. Its vision is to ensure a sustainable return of migrants, through the support of the reintegration process, regardless of the form of return.

For the reintegration of returned Albanian citizens, was worked in the following directions:

- Improvement of the existing legal basis on the support for reintegration;
- Establishment and improvement of the institutional framework for supporting the reintegration of Albanian citizens returned;
- Increase of capacities of the structures involved in the reintegration of returnees in Albania.

Albanian citizens that are returned at the border have had access to transportation services from the Border Crossing Points (BCPs) to the nearest urban centres and the vulnerable groups have had access to the nearest residential centres. During 2010-2015, about 100.000 returned Albanian citizens benefited from this service.

Information on the reintegration of returnees is provided at border crossing points (BCPs) and during the interviewing of persons readmitted from other countries. During the period 2013-2015, were distributed about 80.280 leaflets.

Furthermore, were satisfied the conditions at BCPs approved for the readmission of citizens returning from the police of other countries, for their accommodation and interviewing. The returnees at border crossing points are satisfied the needs for food, water and medicine. During the period 2010-2015, about 86.500 returned Albanian citizens were supplied with these services.

During the period 2010-2015, were prepared information-related posters to be placed at border crossing points. About 100 large posters and 350 small posters with orientation information for returned Albanian citizens were placed at BCPs.

Albanian and foreign citizens, who return at the border from the police of other countries, are subject to special procedures of waiting, interviewing and then selection. One of the purposes of the selection process is the assessment of vulnerabilities and needs or indicators of trafficking in human beings.

The main legal act that governs the emigration of Albanian nationals for employment purposes is Law No.9668, dated 18.12.2006 "On the Emigration of Albanian Citizens for

Employment Purposes", as amended. Article 8, point 1 and point 2, specify the obligation for Albanian state authorities and private employment agencies to inform Albanian citizens who will emigrate for employment purposes. This obligation also extends to Albanian nationals returning from emigration.

Article 8 provides that: "*Responsible state authorities or private employment agencies must provide Albanian citizens who wish to emigrate, including returnees, the right to free information and counselling in the field of vocational training, employment mediation, social protection, trade union organization, housing opportunities, education and social insurance, as well as recognition of living and working conditions in the host country through media, brochures, etc.*".

The returned Albanian citizens can voluntarily appear before Migration One-Stop-Shops, which are established throughout the country. There are in total 36 Migration One-Stop-Shops located in regional and local employment offices. Returned Albanian citizens are interviewed on their needs for reintegration and are provided with information and orientation towards governmental or non-governmental structures (e.g. civil society).

A sustainable policy has been developed to combat illegal immigration and trafficking in human beings. The Albanian migration norms (Law No.108/2013 "On foreigners", as amended) provide for treatment conditions for third-country foreign nationals seized at the border and in the territory, imposing measures against undeclared work and unlawful employment as well as for the protection of victims of trafficking.

In this direction, was mostly applied the voluntary removal procedure and partially dealt at the Closed Center for foreigners in Kareç, following the return procedures on the basis of bilateral agreements between Albania and the countries of origin/transit. The foreigner, to whom a detention order has been issued at a closed center, shall be entitled the right to appeal this measure to the district court at any time, following the notification in writing on the detention or prolongation of detention. The deadline for the voluntary execution of the removal order is not less than 7 days and not more than 30 days from the date of notification.

The voluntary enforcement of the removal order may be postponed to an adequate period (longer than 30 days) considering the specific circumstances of each particular case concerning the category of:

- a) children who attend school and the academic year ends within less than three months, until the completion of the academic year of the children;
- b) foreigner, who has a financial obligation and must liquidate this liability until 3 months from the date of notification.
- c) foreigner who has health issues, until recovery for travel or termination of stay in isolation or quarantine, according to a decision of public health authorities.

The foreigner whose extension of the period of voluntary enforcement of the removal order is approved, shall have the right to:

- a) stay together with their family members who reside in the territory;
- b) be provided with medical emergency services and treatment for specific diseases and also public health services;

- c) (minors) be granted guaranteed access to the school system based on their period of residence;
- ç) special services for disabled persons.

Article 127 of the Law on foreigners provides for the rights of the foreigners detained in the closed centre. According to the provisions of this chapter, the foreigner detained in the closed centre shall be informed in a language of his or her understanding or at least in English, of each action performed by the competent authorities concerning his or her detention in the closed centre. The foreigner shall have the right to human treatment, provision of adequate amount of food, legal aid at any time, medical care, the right to inform the consular representative of his or her detention. The foreigner shall have the right to appeal with the Judicial District Court for the violation of his or her fundamental rights at the closed centre.

The foreigner, if readmitted, shall be informed of the rights and obligations he or she has, based on the national legislation, in a language of his or her understanding or at least in English.

Article 128 provides for compensation of costs incurred for forced removal/expulsion. In this direction the foreigner shall cover the costs of accommodation in the closed centre and other costs incurred during his or her forced removal/expulsion. All the financial means in cash shall be taken from the foreigner who is subject to expulsion, in the form of a deposit, against the issue of a certificate to the foreigner. The financial means taken from the foreigner shall only be used to cover the costs of staying in the center and other expenses incurred during his removal/expulsion.

If the foreigner has no funds to cover the costs mentioned in point 3 of this article, the costs shall be covered by the natural or legal person who has enabled entry or stay or illegal transit of the foreigner in the territory of the Republic of Albania, or by the natural or legal person who has assumed the costs of stay in the territory of the Republic of Albania and return of the foreigner, or by the carrier, or the employer who has employed an foreigner contrary to the provisions of this law.

The taking possession and use of financial means according to the provisions of this article shall be made based on an order of the authority which removes forcibly or returns the foreigner according to a procedure approved by instruction of the Minister of the Interior.

Responsible state authorities prohibit the propagation and use of false information from any subject under the provisions of the Criminal Code when the above activity constitutes a criminal offense.

During this period of time and in implementation of this law the Ministry of Interior has exercised its duties and responsibilities on the border control, to ensure the regular emigration of Albanian citizens, taking of measures to prevent and eradicate trafficking in human beings, treatment with priority to provide the necessary documentation of Albanian nationals that wish to emigrate, monitoring the registration and border control system for Albanian emigrants and exchanging information on the number, countries and duration of stay of Albanian emigrants.

foreigners living in Albania (beneficiaries of international protection, EU citizens and third country nationals, etc.) are entitled to a wide range of services, depending on the residence motive.

Department of Border and Migration under the authority of the State Police (organized at central and local level), is the responsible authority for dealing with the foreigners that enter, transit or stay in the territory of the Republic of Albania.

This authority has the responsibility to control foreigners and make decisions as regards the visa application procedures of foreigners who wish to enter the Republic of Albania, control the border by applying the conditions and criteria for the entry, stay and transit in the Republic of Albania and inform foreigners about the procedures, criteria and documentation that are required to obtain a residence permit as well as provide them with a residence permit, extension of residence ... etc.

For the enforcement of legal obligations, Public institutions provide foreigners with protection against any form of discrimination, throughout the process of integration into society.

Albanian and foreign citizens, who return at the border from the police of other countries, shall undergo the special procedures of waiting, interviewing and then selection.

One of the purposes of the selection process is the assessment of vulnerabilities and the needs or indicators on the trafficking in human beings.

### Statistics:

On 1 January 2018, the number of foreign nationals with residence permits in Albania was **12906**, or about 0.4% of the population. In 2017, foreigners from European countries amounted 59%, while 10% came from the American continent (North & South), 28% from the Asian continent, 3% from Africa, and the number of immigrants from other countries was negligible.

**Table 1.** Albanian and foreigners staying in Albania (2016-2017)

	2016	2017
<b>Annual average population in Albania</b>	2,876,101	2,873,457
<b>Immigrants registered</b>	125019	12,906

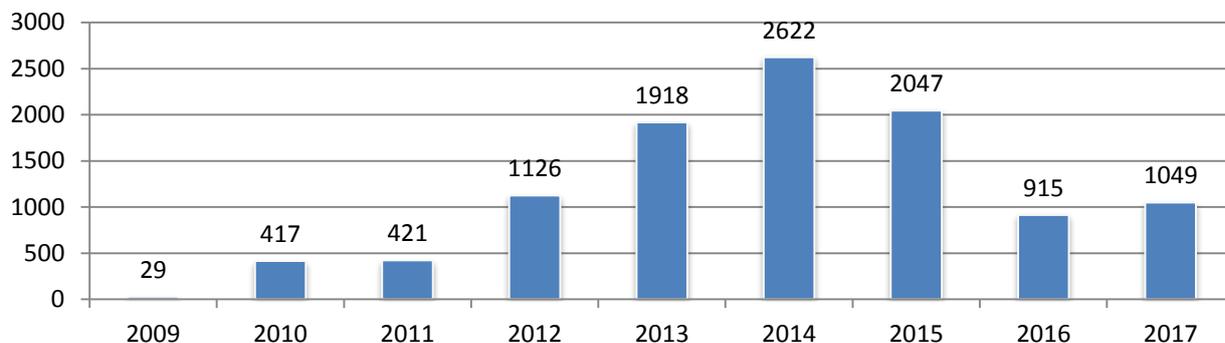
**Table 1.1** – foreigners refused to enter as per the type of BCP

Border/year	2014	2015	2016	2017
Land	366	290	273	238
Air	101	327	162	256
Sea	5	12	2	47
<b>Amount</b>	<b>472</b>	<b>629</b>	<b>437</b>	<b>541</b>

**Table1.2** – foreigners from third countries in the Closed Reception Centre;

Viti	2014	2015	2016	2017
Number of foreigners as per gender	424-M	299-M	83-M	62-M
	48-F	28-F	16-F	12-F

**Table 1.3.** Irregular immigrants seized over the years (2009-2017);



Year 2017 marked an increase in the number of foreign nationals caught trying to illegally transit Albania. The number of citizens caught during the same year (1.049) was about 13% higher than the number of foreign nationals caught the previous year ago (915).

Also in 2017, Albania continued to remain a transit country for immigration of citizens from the Middle East and North Africa (LMAV), with a growing trend of the number of irregular immigrants during the summer season.

It should be noted that during the summer season (July-August-September 2017), the number of immigrants reached 382 immigrants, while for the same period last year the number was 321, and this change is not much evident.

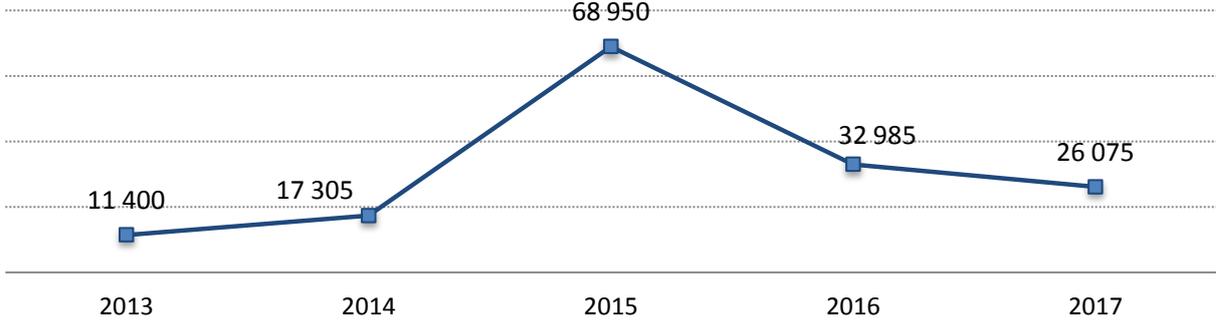
The following table shows the number of Albanian citizens returned from EU countries in the last two years, by age groups.

**Table 1.4.** Returned Albanian citizens by age group for (2016-2017);

YEAR	TOTAL	MALE		FEMALE	
		over 18 years old	below18 years old	over 18 years old	below18 years old
2016	21681	18443	978	2259	222
2017	20632	18596	382	1620	34

Therefore, about 90% of Albanian citizens returned in 2017 were males versus 10% females, while in 2016 men amounted about 85% of returnees. Furthermore, the number of returnees returned in 2017 was decreased by about 5% compared to 2016, therein referring to the decrease of the number of Albanian citizens that wish to stay in EU countries irregularly.

**Graph 1.** Albanian citizens who sought asylum in EU countries (2013-2017);



## **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 Labor, 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 [0]

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

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As regard the agreements, the State Social Service has not entered any agreement with any state for the provision of services. The State Social Service cooperates with the State Police Director or the Ministry of Foreign Affairs under the Joint Order of the General Director of State Police and General Director of State Social Service No. 332/3 dated 07.03.2014 "On taking measures for the reception and social treatment of unaccompanied children returned / readmitted from other countries".

This means that we only deal with the process of repatriation of minors and not with adult persons.

Readmission requests are also issued from the relevant authorities abroad, but for the readmission process they are again addressed by the police or the Ministry of Foreign Affairs. Furthermore, the State Social Service has also concluded an agreement with Terre Des homme organization regarding the referral of cases of unaccompanied minors, where social assessments are made in the biological family, and based on the project of this organization they also intervene to strengthen the family that has economic problems.

- **Co-ordination of social insurance system - Bilateral Agreement in the field of social protection that the Republic of Albania has entered into with other Countries**

The legal framework in the field of social insurance, in terms of the free movement of people, consists of bilateral agreements on social insurance that coordinate the social insurance systems of the contracting states.

The following bilateral agreements on social insurance, entered between Albania and the respective countries, were ratified and entered into force:

- With Belgium, Law No.35/2014, dated 04.03.2014, entered into force on 1 January 2016;
- With Hungary, Law No. 150/2015, dated 21.12.2015, entered into force on 1 July 2016;
- With Macedonia, Law No.123/2015, dated 12.11.2015, entered into force on 1 June 2016;
- With Luxembourg, Law No.42/2015, dated 04.16.2015, entered into force on 1 July 2016;
- With Romania, Law No. 42/2016 dated 04.14.2016, entered into force on 1 September 2016;
- With the Czech Republic, Law No. 34/2016 dated 24.03.2016, entered into force on 1 February 2017.
- With Germany, Law No. 23/2016, dated 03.10.2016, entered into force on 1 December 2017.
- The agreement with Austria was signed on January 25, 2017 by the ministers of the two respective countries that cover the social affairs. It was ratified by the Albanian Parliament on 29 March 2018.
- It is expected to sign the agreement with Canada and after the signing, will continue the procedures for the ratification and the entry into force of the agreement.

- The Agreement between the Council of Ministers of the Republic of Albania and the Government of the Republic of Kosovo on the certification of periods of insurance for the realization of the right to pension was approved in principle by DCM No. 68, dated February 3, 2017. The agreement was signed on 27.11.2017 by the ministers and were followed the procedures for the ratification of the Agreement by the Parliament.

Two rounds of talks (2-5 May 2018 in Tirana, Albania and 13-16 November 2017 in Bern, Switzerland) were held between the representatives of the Republic of Albania and the Swiss Confederation, and was discussed and agreed on the basic draft agreement in the field of social protection between the two countries

## **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 Labor (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 labor organizations for the defense 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 Labor (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 [0]

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

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Law No.108/2013, "On foreigners", as amended, regulates the regime of entry, stay, employment and exit of foreigners from the territory.

Based on the hierarchy of legal norms in the country (Article 16 of the Constitution) the law abide by the Albanian Constitution but also the international conventions ratified in the field of human rights and migrants' rights. The provisions of the Law on foreigners are without prejudice to *the fundamental human rights and freedoms* provided for in the above instruments.

The Albanian Constitution affirms the right of foreigners to *enjoy the same rights as Albanian citizens, except when the Constitution specifically binds the enjoyment of certain rights and freedoms with Albanian citizenship.*

Furthermore, the provisions of the law and their implementation in practice are not in conflict with the Convention on the Protection of the Rights of Migrants and Members of their Families, ILO Conventions, EC, PNDCP, PNDESK, ECHR, European Social Charter and other International and European Conventions, which are focused on the protection of human rights / migrants' right.

The law stipulates the authorities responsible for foreigners and the obligation of foreigners to abide by the Constitution, applicable laws and decisions of state authorities during the entry, stay and leave of the territory of the country.

Every foreign employee shall be entitled all the rights granted by the labour legislation, including the membership in trade unions and their governing bodies, the same as Albanian workers.

The legislation of the Republic of Albania is complete in order not to accept economic and legal discrimination in labour legal relations due to membership or not in the trade union organization.

Article 10 and Article 181 of the Labour Code of the Republic of Albania guarantee the right to join and freely organize in trade unions.

Articles 16/1, 46/1 and 50 of the Constitution of the Republic of Albania guarantee the rights of foreigners in this field. Article 46 of the Constitution provides that "Everyone has the right to organize collectively for any lawful purpose".

Article 50 of the Constitution of the Republic of Albania provides for: Employees have the right to unite freely in Labour organizations for the defense of their work - related interests". Under this provision, everyone has the right to participate freely or to be a member of one or several trade union organizations.

Therefore, according to the provisions of the Constitution and the Labour Code, the foreign employees, who lawfully reside in Albania and perform a job in accordance with law 108/2013 "On foreigners" have the right to organize and join trade unions".

Accommodation:

Law No. 9232/2004 "On Social Housing Programs" as amended, constitutes the basic law on housing, and provides for the following:

- Article 4 - Determining the families that benefit from social housing programs - paragraph 3 states:

"From the programs determined in Chapters III and IV of this Law also benefit the foreign citizens who regularly reside in Albania and have been granted from the competent bodies the status of:

- a) "migrant worker";
- b) "asylum seeker"

- Article 5 – The criteria for the selection of beneficiaries provides that the beneficiary families are selected according to an assessment system, which evaluates:

- c) Social conditions under which the following cases were given priority:
  - iii) Returned migrant, migrant worker

- Paragraph 3 of Article 5 states:

o When the program is implemented with complete or partial funding of the State Budget, the ministry that covers housing issues related to the amount of funding and in coordination and agreement with head of the respective local government unit may condition an evaluation system that favours the categories which have priority in national policies such as [...] migrant workers [...].

- Article 24 - Lease subsidy - paragraph 2 sets out the priorities on the allocation of lease subsidy, including "migrant workers" as one of them.

## **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.

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Increasing economic relations and cooperation between countries have increasingly shown the importance of measures to prevent international double taxation. Taking into account also factors such as the development of new technologies, the changing economic conditions and the way how trans-border transactions are undertaken, it is important for countries to conclude double taxation agreements on the avoidance of double taxation and prevention of fiscal avoidance with respect to income and capital taxes.

It has long been accepted from different countries that should be clarified, standardized and confirmed the fiscal status of taxpayers who are engaged in commercial, industrial, financial or any other activity in other countries, through application, from all countries, of common solutions for identical double taxation cases.

These are the main purposes of the Convention of Double Taxation on Incomes and Capital, which provides a mean to solve the most common problems arising in the area of international double taxation, on a uniform basis.

Moreover, it should be recognized the fact that the Convention does not exclusively deal with the elimination of double taxation, but also addresses other issues, such as the prevention of fiscal evasion and non-discrimination.

According to the abovementioned goals, Albania has signed the Treaty for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital with these countries: Italy, Bulgaria, Sweden, Norway, Greece, Malta, Switzerland, Moldova, Belgium, China, France, Egypt, Austria, Slovenia, Latvia, Poland, Romania, Malaysia, Hungary, Turkey, South Korea, Bosnia and Herzegovina, Luxembourg, Ireland, Estonia, Germany, Kuwait, Spain, Singapore, Qatar, India, Great Britain and Northern Ireland, United Arab Emirates and Iceland.

## **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 reunion<sup>1</sup>.

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 [0]

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

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The legal framework on foreigners, more specifically Law No.108/2013 "On foreigners", as amended, guarantees the right of foreigners who legally reside in the Republic of Albania to create or maintain family life. This law stipulates the rules for exercising this right, as well as the rights of family members accepted under these rules. Specifically, this arrangement is made in the following provisions:

Article 3, point 15, provides for the definition of "Family reunification" which means the entry and stay in the Republic of Albania of family members of an Albanian citizen who does not hold the Albanian citizenship or the citizenship of the foreigner, resident in the Republic of Albania, in order to preserve the family unit, regardless whether the family relationship is created before or after the entry of the foreigner in the Republic of Albania, in the case of family reunification of the family of the foreigner.

Point 3 of Article 14, of this Law provides for that "Family members" of the foreigner are the spouse, partner, which partnership has a stable and proved nature; minors, unmarried children, part of the family composition, including the children under guardianship and children adopted upon a court decision or a directly applicable decision based on the international obligations of the Republic of Albania or a decision which must be directly enforced, in compliance with the international obligations, as well as the adult children, unmarried, when they objectively cannot fulfil their needs due to their health situation; direct descendants, under his/her custody or his/her spouse custody, according to the legislation of the country of origin, and who do not enjoy proper family support in their country of origin.

Article 55 of Law on foreigners provides for that the foreigner, who is member of the family of an Albanian national, shall be equipped with a residence permit with a period of validity of no longer than one year when the residence permit is issued for the first time, unless otherwise stipulated in agreements or in this law. The residence permit shall be further renewed for a validity period of two years. This rule for the spouse of an Albanian national shall be legally applicable even to the minor, who is unmarried and under the legal guardianship of the foreigner.

Article 56, provides for family reunification of the foreigner with the family members. The foreigner, who has been supplied with a residence permit in the Republic of Albania, may lodge an application with the local Border and Migration Police for family reunification purposes, if the following requirements are fulfilled:

- a) family members of the foreigner reside outside the territory of the Republic of Albania. In exceptional cases, for humanitarian grounds, according to the criteria approved by decision of the Council of Ministers and procedures approved by Instruction of the Minister of Interior, the application may be lodged when the family member of the foreigner is in the territory of the Republic of Albania;
- b) the foreigner has been supplied with a residence permit in the Republic of Albania for a validity period of at least one year and has the possibility to renew the permit in compliance with the provisions of this law;
- c) the foreigner ensures normal accommodation according to the general standards of health and security;
- d) the foreigner has sickness insurance covered for him or her and his / her family members for whom he/ she has applied for family reunification;
- e) the foreigner has for him/herself and family members sufficient funds to prevent them resorting to social aid scheme;
- f) the foreigner submits the documentation based on the provisions of the decision of the Council of Ministers.

The residence permit for family reunification purposes issued for the first time has a validity period of one year and may be renewed, unless otherwise foreseen in agreements or in this law.

Unmarried children and also children of the predecessor of the applicant (sponsor) who find it objectively impossible to fulfil their needs because of their health conditions, may be supplied with residence permit in exceptional cases. Unmarried children may apply for residence permit for family reunification purposes until they reach 30 years of age, provided that the applicant foreigner (host) covers the living costs for them.

In case of refusal of issue of the residence permit for family reunification, the foreigner or the family members have the right to appeal according to the legislation in force.

Article 57 of the Law on foreigners provides for the criteria to benefit *the autonomous residence permit*. This permit is issued if the spouse or partner and the child who has reached majority, provided with a residence permit for family reunification purposes, stayed for an uninterrupted period of at least 5 years in the territory of the Republic of Albania based on a residence permit for family reunification purposes and provided that he/she has not been supplied with residence permit for reasons other than those of family reunification during this period of stay.

In case of breakdown of the family relationship of the spouse or unmarried partner within this 5-year period from the issue of the first residence permit for family reunification purposes, this right shall be lost.

In case of death of the requesting foreigner (sponsor), the spouse or predecessors and descendants who have resided in the Republic of Albania with a residence permit for family reunification purposes for at least 3 years, shall be entitled to apply autonomously for residence permit if they fulfil the general requirements laid down in this law and also considering the best interest of the child.

If the children who reach the age of majority are supplied with permanent residence permit, the first time application for autonomous residence permit shall be made for permanent residence permit, in compliance with the requirements provided for in article 61 of this law.

An foreigner is not granted a residence permit or cancelled a residence permit if it is proved that marriage is fictitious under Article 59 of this law. Fictitious marriage, according to this law, is the marriage made in order to avoid the fulfilment of the conditions for the entry and stay of foreigners in the Republic of Albania.

Article 60 provides for the cases when the residence permit obtained for family reunification purposes is annulled.

The authority responsible for border and migration shall annul the residence permit of the foreigner obtained for family reunification purposes if it is proved that:

- the requesting foreigner (sponsor) and the beneficiary have entered into an fictitious marriage for the purpose of benefiting the residence permit, have deceived in the presentation of information or have presented false information;
- it was issued for family reunification purposes and the marriage was dissolved within five years from issuing of the residence permit and within 3 years from issuing of the residence permit in case of death of a spouse and the rights for parental care have ceased to exist, except for the case where the foreigner has resided in the Republic of Albania based on a five-year residence permit.
- both parents, or either parent or legal guardian has been cancelled the permanent residence and the minor is not guaranteed the stay by the other parent or legal guardian;

Law No.108 / 2013 "On foreigners", as amended, also provides for cases where the border and migration local authority issues a removal order to an foreigner. This happens when the foreigner fails to satisfy the requirements of residence in the Republic of Albania, as defined in this law, when has served a sentence given by Albanian courts for a crime committed with intention, for which the Criminal Code of the Republic of Albania provides for a minimum sentence of not less than 2 years of imprisonment and although he meets the requirements of residence, works in contradiction with the criteria set out in the legislation in force. The deadline for the voluntary execution of the removal order is not less than 7 days and not more than 30 days from the date of notification. The foreigner, who has been granted the extension of the period of application of the voluntary removal order, has the right to remain with his family members who are in the territory.

The foreigner who is a member of the family of an foreigner whom has been recognized the refugee status in the Republic of Albania is not subject to an expulsion order.

**Table. Number of residence permits for family reunion, issued to foreign nationals by years**

<b>Year</b>	<b>Year 2014</b>	<b>Year 2015</b>	<b>Year 2016</b>	<b>Year 2017</b>
<b>Number of residence permits</b>	1610	1671	1699	1944

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<sup>1</sup>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.

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The Constitution of Albania provides for: "The fundamental rights and freedoms and the duties contemplated in this 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." Since the right to legal assistance in the conditions of economic impossibility or in the cases provided for in the legislation on the legal aid guaranteed by the state is not a right reserved only for Albanian citizens, in the Constitution this right is therefore also guaranteed to foreigners regardless of their status.

The Law No. 108/2013 "On foreigners" does not have specific provisions for the treatment with legal assistance in the conditions of economic inability, but the Law as well as the Constitution and the whole legislation provide for that: "Direct and non-direct discrimination is prohibited by legal, public and private persons, throughout the immigration process for employment".

In addition, the law provides for the right of appeal to foreign workers in the case of refusal or revocation of a work permit, providing that: "*within 15 days from the date of notification of refusal or revocation of the work permit, the foreigner may appeal in writing to the Minister in charge of migration and employment issues, who will reply within 15 days from the date of receipt of the complaint.*"

Further, the Law on 111/2017 "On State Guaranteed Legal Aid" stipulates the forms, conditions, procedures and rules for the organization and administration of legal aid guaranteed by the state in order to protect the fundamental rights of the individual and his legitimate interests. Article 10 of this law stipulates the subjects that shall be beneficiaries of legal aid: "... [...]"

- a) Albanian citizens with domicile or residence in the territory of the Republic of Albania;
- b) foreign citizens or stateless persons, who stay in the territory of the Republic of Albania for a temporary or permanent period and who have been equipped with permit of stay in compliance with the legislation in force on foreigners;
- c) foreign citizens or stateless persons, that enter legally in the territory of the Republic of Albania, and that benefit it on the basis of international agreements ratified by the Republic of Albania or based on the principle of reciprocity;
- d) asylum seekers, persons entitled to the status of refugee and persons that are in the process of appeal of administrative and/or judicial decisions for the refusal of the application for asylum or revocation of the decision on the status of refugee in accordance with the legislation in force for asylum in the Republic of Albania.

2. The subjects foreseen in paragraph 1 of this article shall benefit legal aid, if fulfilling the criteria foreseen in this law.

Furthermore, the Code of Criminal Procedure of the Republic of Albania provides for cases of mandatory defense of the defendants; cases where the latter do not have sufficient financial means, as well as their right to a translator.

Letter "d", of Article 34/a "Rights of the defendant", provides for: " .. [ . .. } d) have a defence lawyer provided by the state if the defence lawyer is mandatory or he cannot afford one, pursuant to the provisions of this Code and the legislation into force on legal aid;

Article 49, "Mandatory defence" provides for as follows:

1. The proceeding authority shall provide immediately a lawyer paid by the State to the defendant, who has not appointed or no longer has a retained lawyer, if he:
  - a) is under eighteen years of age;
  - b) is deaf and mute;
  - c) has limited capabilities which hinder his ability to defend himself;
  - ç) is charged with a criminal offence, punishable by not less than 15 years' imprisonment, in the maximum term;

- d) is charged with a criminal offence pursuant to letters “a” and “b”, of article 75/a, of this Code; dh) has been declared escaped or in absentia upon a court decision;
  - e) the arrested or the detained person is questioned;
  - ë) in the cases provided for by paragraph 5 of article 205, or paragraph 1, of article 296 of this Code;
  - f) in every other case provided for by law.
2. If reasons for mandatory defence exist, pursuant to this article, the proceeding authority shall assign immediately a lawyer to the defendant. The lawyer shall assist the defendant during all phases of the proceedings, as long as the conditions provided in paragraph 1 of this Article exist.
  3. The appointed lawyer, pursuant to this article, is chosen by the proceeding authority out of the list made available by the Bar Association.
  4. If the court, the prosecutor and the judicial police must carry out an action requiring the presence of a lawyer and the defendant does not have one, they shall inform the appointed lawyer on such action.
  5. If the presence of the lawyer is required and the retained or appointed lawyer has not been provided, has not shown up or has withdrawn from the defence, the court or prosecutor shall apply paragraph 4 of article 350 of this Code. If his absence is justified, the court or the prosecutor may appoint another lawyer in substitution, who shall exercise the rights and takes over the duties of the lawyer.
  6. The assigned lawyer shall be replaced only for lawful reasons. He shall cease his functions if the defendant chooses his lawyer.
  7. When the defence cannot be secured pursuant to this provision and paragraph 3 of article 49, it is guaranteed by the institutions providing free legal aid, pursuant to the legislation in force.

Article 49/a The defendant without sufficient financial means” provides for:

“If instances for mandatory defence do not exist and the defendant who has no sufficient financial means requests a defence lawyer, the proceeding authority appoints the defence lawyer from the list made available by the institutions of free legal aid. The expenses of the defence shall be covered by the State”.

## **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 [0]

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

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Law No.108/2013 "On foreigners", as amended, contains the legal definitions regarding the expulsion of a foreigner from the responsible authority for border and migration (Article 109, Law No. 108/2013 "On foreigners", as amended).

Expulsion of the foreigner by the authority responsible for border and migration is an administrative measure taken for the forced removal of the foreigner from the Albanian territory, based on case by case assessment, if it results that the foreigner:

- a) has entered illegally the territory of the Republic of Albania and there is information that he / she will transit illegally to other countries;
- b) has failed to leave the Republic of Albania within the time limits set in the removal order, based on no objective reason or after removal from the territory and within the time limits of prohibition of entry, the foreigner re-enters into the territory of the Republic of Albania;
- c) has not left the Republic of Albania for a period of up to 60 days after expiry of the period of stay indicated in the visa, residence permit or period of stay foreseen by this law for the citizens who enter visa-free and in case of information that the foreigner intends to abscond the police authority responsible for border and migration;
- d) has been readmitted to another country under Readmission Agreements in force in the Republic of Albania;
- e) has been declared undesirable person according to the provisions of article 9 of this law and his /her presence in the territory is considered a threat to public order and security.
- f) has been convicted for a criminal offence which is sentenced to a minimum of three years of imprisonment according to the Albanian legislation.

If the foreigner is subject to expulsion by the authority responsible for border and migration, according to this article, he or she shall be detained in a closed centre according to article 121 of this law, until the enforcement of the expulsion order. In case other alternatives are found for the enforcement of interim measures, as defined in section IV of this chapter, the latter shall prevail over detention.

The foreigner who does not hold a travel document must appear in person or accompanied by the competent authorities before the diplomatic representations and consular posts accredited to the Republic of Albania, in order to be supplied with such document. If there is no diplomatic representations and consular posts of the country of the foreigner in the Republic of Albania, the central authority responsible for border and migration shall request the issue of the travel document by the country of origin or by the diplomatic representations and consular posts of the country of the foreigner in another country, through the authority responsible for consular issues in the Ministry of Foreign Affairs. If the diplomatic representation refuses to issue a travel document, the central authority responsible for border and migration shall issue

to the foreigner a standard travel document defined by readmission agreement, which purpose is to enforce forced removal of the foreigner.

The central authority responsible for border and migration, in implementing this law, may issue laissez passer, if the foreigner is not provided with a travel document according to point 3 and 4 of this article and article 17 of this law. The central authority responsible for border and migration, based on the agreements in force in the Republic of Albania may cooperate with other countries for the procedure of return or joint return of foreigners.

The foreigner shall be informed in writing, in a language of his or her understanding, or at least in English, of the enforcement of the administrative measure of expulsion against him or her, with an explanation of the reason the order is issued, the date and place of enforcement, the manner of transportation to the country of destination and the period of validity of the prohibition of entry. The form of the expulsion order, which is issued by the authority responsible for border and migration, shall be approved by instruction of the Minister of the Interior.

A sustainable policy has been developed to combat illegal immigration and trafficking in human beings. The Albanian migration provisions (Law no.108 / 2013 "On foreigners", as amended) provide for treatment conditions for foreign nationals from third countries seized at the border and territory, imposition of measures against undeclared work and illegal employment, as well as for the protection of victims of trafficking.

In this regard, removal procedure on voluntarily basis has been applied and partially dealt at the Closed Center for foreigners in Kareç, following with the procedures of return on the basis of bilateral agreements between Albania and the countries of origin/transit.

Law No. 108/2013 "On foreigners", as amended provides for that the foreigner who is the subject of a detention order in the closed centre has the right to appeal with the Judicial District Court against such a measure, after the notification in writing on the detention or extension of the period.

The deadline for voluntary enforcement of the removal order shall be no less than 7 days and no more than 30 days from the date of notification. The voluntary enforcement of the removal order may be postponed to an adequate period (longer than 30 days) considering the specific circumstances of each particular case concerning the category of:

- a) children who attend school and the academic year ends within less than three months, until the completion of the academic year of the children;
- b) foreigner who has a financial obligation and must liquidate an investment until 3 months from the date of notification.
- c) foreigner who has health issues, until recovery for travel or termination of stay in isolation or quarantine according to a decision of public health authorities.

The foreigner whose extension of the period of voluntary enforcement of the removal order is approved, shall have the right to:

- a) stay together with their family members who reside in the territory;
- b) be provided with medical emergency services and treatment for specific diseases and also public health services;

- c) the minor foreigner be granted guaranteed access to the school system based on their period of residence;
- d) special services for disabled persons

The foreigner, who has been granted the extension of the period of application of the voluntary removal order, has the right to remain with his family members who are in the territory. It is not subject to an expulsion order of a foreigner who is a member of the family of a foreigner who is recognized refugee status in the Republic of Albania.

The foreigner shall have the right to appeal against the expulsion order of the authority responsible for border and migration, according to the legislation in force. The foreigner, until termination of the appeal proceedings, shall be kept under conditions of alternative measure of supervision or detention in the closed centre, pending immediate removal, according to the order issued for this purpose (Article 110, Law No.108/2013 “On the foreigners”, as amended)

The foreigner or his or her family members may request the administrative review by the issuing authority of the order declaring the person undesirable and the expulsion order to an undesirable person. (Article 114, Law No.108/2013 “On foreigners”, as amended).

The foreigner detained in the closed centre, according to the provisions of this chapter, shall be informed in a language of his or her understanding or at least in English, of each action performed by the competent authorities concerning his or her detention in the closed centre. The foreigner shall have the right to human treatment, provision of adequate amount of food, legal aid at any time, medical care, the right to inform the consular representative of his or her detention and the right to appeal with the Judicial District Court for the violation of his or her fundamental rights at the closed centre. (Article 127 of Law No.108/2013 “On foreigners”, as amended).

The foreigner is kept in a closed center for a maximum period of up to 6 months.

The foreigner shall be notified in writing, in a language that he or she understands, or at least in English, about the detention order in the closed center, which contains the reason for the detention, the term of detention, the right to provide legal protection with a lawyer chosen by him or ex officio, as well as to contact his relatives.

If readmitted, the foreigner shall be informed of the rights and obligations under the Albanian legislation, in the language he understands, or at least in the English language.

*Compensation of costs incurred for forced removal/expulsion.* The foreigner shall cover the costs of accommodation in the closed centre and other costs incurred during his or her forced removal/expulsion. All the financial means in cash shall be taken from the foreigner who is subject to expulsion, in the form of a deposit, against the issue of a certificate to the foreigner, which form shall be approved by instruction of the Minister of the Interior. (Article 128 of Law No. 108/2013 “On foreigners”, as amended).

The financial means taken from the foreigner shall only be used to cover the costs of his stay in the centre and other expenses incurred during his removal/expulsion. If the foreigner has no funds to cover the costs, the costs shall be covered by the natural or legal person who has

enabled entry or stay or illegal transit of the foreigner in the territory of the Republic of Albania, or by the natural or legal person who has assumed the costs of stay in the territory of the Republic of Albania and return of the foreigner, or by the carrier or the employer who has employed an foreigner contrary to the provisions of this law.

The taking possession and use of financial means according to the provisions of this article shall be made based on an order of the authority which removes forcedly or returns the foreigner according to a procedure approved by instruction of the Minister of the Interior.

Law No.108 / 2013 "On foreigners", as amended, also provides for cases where the local border crossing and migration authority issues a removal order to an foreigner. This happens when the foreigner no longer meets the conditions of stay in the Republic of Albania, as defined in this law, when he has served a sentence given by the Albanian courts for a deliberately committed crime, for which the Criminal Code of the Republic of Albania provides for a minimum sentence of not less than 2 years in prison and although it meets the conditions of stay, it works in contradiction with the criteria set out in the legislation in force.

The Law on foreigners provides for the category of persons that are not expelled. The foreigner who meets one of the following requirements shall not be subject to the expulsion order:

- a) is supplied with a permanent residence permit,
- b) is born in the Republic of Albania,
- c) has entered the Republic of Albania as an unaccompanied minor and has been supplied with a permanent residence permit;
- d) is supplied with temporary residence permit and is married to an foreigner who has permanent residence or who is an Albanian citizen;
- e) based on grounded reasons to suspect that the foreigner might be punished to death, subjected to torture, inhuman and degrading treatment or punishment for discriminatory reasons in the country of origin or another country;
- f) is an unaccompanied minor, if the country of origin, another country or other institutions do not guarantee family reunification or proper health care;
- g) is a family member of the foreigner who is recognized the refugee status in the Republic of Albania, (Article 113, of Law No. 108/2013 "On foreigners", as amended).

Article 116, as regards the obligation to report, stipulates that the foreigner may be obliged to report at regular intervals to regional authorities of border and migration police if the best interest of the foreigner's family is considered.

The local authority responsible for border and migration, in case of detention of an foreigner in the closed centre, at the request of the latter, shall take immediate measures for the care to family members of the detained foreigner who have been left without supervision and support. (Article 120, Law No. 108/2013 "On foreigners", as amended).

Article 125 provides for the detention of an unaccompanied minor

1. The unaccompanied minor, in exceptional cases, who is subject to a detention order, shall be accommodated in a state social centre opened specifically for this purpose by or at

another centre based on cooperation with international organisations dealing with children, victims of trafficking in human beings or other categories of persons in need.

2. The minor may be detained in the closed centre only if it is his or her or his/her family best interest or, in premises separated from those for the adults.
3. The opinion of a social worker or psychologist shall be heard before detaining a minor in the closed centre.
4. The authority responsible for border and migration in case of doubt over the age of the detained foreigner may request the specialised state institutions to run a DNA-test on the foreigner in order to verify his or her age. In case doubts over the age of the detained person remain even after the verifications and expertise, it shall be presumed that the person is a minor.

In 2017, out of 1.049 foreign nationals caught or found out in an irregular situation, 683 persons left by readmission procedures, mainly to Greece. The citizens returned / readmitted were from Syria, Afghanistan, Pakistan, Morocco, etc. For foreign nationals from third countries seized at the border and territory, the voluntary departure procedure has been largely applied and partly dealt with at the Close Centre for foreigners in Kariç, by following with the procedures of return on the basis of bilateral agreements between Albania and the countries of origin / transit.

The number of people treated at the Closed Center decreased from 99 in 2016 to 74 in 2017. This decrease is due to the priority of treatment of foreigners, subjects of legal obligation to leave the territory of the Republic of Albania with removal orders executed on a voluntary basis.

*It is noted that in 2008 the number of 2018 foreign nationals, subjects to deportation, does not reflect the reality. Subjects of deportation were mainly persons detained / found in irregular situations at the border or in the territory of the Republic of Albania and which became subject to readmission applications addressed to transit countries (Greece). Another smaller part belonged to legal resident migrants who were converted to an irregular situation in the Republic of Albania (exceeding the length of stay, attempted illegal crossing of the state border, danger to national security and / or public order and security etc.)*

Regarding what is required by the Committee, we are listing in the attached Annex the references of Law no. 108/2013 "On foreigners", as amended by law no.74 / 2016.

## **REMOVAL OF FOREIGNERS (Removal Order)**

### *Article 106*

#### ***Removal order and enforcement deadline***

1. ***The local regional authority responsible for border and migration shall issue the removal order to an foreigner who:***
  - a) *does not fulfil conditions for entry and stay in the Republic of Albania, according to the provisions of this law;*

- b) *has served a sentence given by the Albanian courts for a criminal offence punished by a minimum of 2 years of imprisonment according to the Criminal Code of the Republic of Albania;*
- c) *regardless of fulfilment of conditions for stay, the foreigners is apprehended while working at variance with the criteria defined by the legislation in force.*
- 2. *The period of prohibition of entry of the foreigner into the territory shall be set based on the case by case assessments and it shall vary from 3 months to 5 years.*
- 3. *The deadline for voluntary enforcement of the removal order shall be no less than 7 days and no more than 30 days from the date of notification.*
- 4. *Enforcement of the removal order for different categories of illegally staying foreigners shall be as follows:*
  - a) *no more than 10 days from the date of notification, against the foreigner who stays illegally in the territory of the Republic of Albania, according to the provisions of this law, or who is apprehended while working illegally; or who has served a sentence given by the Albanian courts for a criminal offence punished by a minimum of 2 years of imprisonment according to the Criminal Code of the Republic of Albania.*
  - b) *no more than 30 days from the date of notification, against the foreigner whose visa has been annulled or revoked, or who has been refused renewal of residence permit, or whose the residence permit has been annulled or revoked.*
- 5) *The voluntary enforcement of the removal order may be postponed to an adequate period (longer than 30 days) considering the specific circumstances of each particular case concerning the category of:*
  - a) *children who attend school and the academic year ends within less than three months, until the completion of the academic year of the children;*
  - b) *foreigner, who has a financial obligation and must liquidate an investment, 3 months from the date of notification.*
  - c) *foreigner who has health issues, until recovery for travel or termination of stay in isolation or quarantine according to a decision of public health authorities.*
- 6. *Illegally staying foreigners, whose extension of the period of voluntary enforcement of the removal order is approved, must report every 10 days to the regional authorities responsible for border and migration of their place of residence.*
- 7. *The foreigner, whose extension of the period of voluntary enforcement of the removal order is approved, shall have the right to:*
  - a) *stay together with their family members who reside in the territory;*
  - b) *be provided with medical emergency services and treatment for specific diseases and also public health services;*
  - c) *minor foreigner be granted guaranteed access to the school system based on their period of residence;*
  - ç) *special services for disabled persons.*
- 8. *At the moment of enforcement of the removal of the foreigner from the territory, it shall be considered the best interest of the child, vulnerable persons, family life and health situation of the foreigner who is subject to removal from the territory.*
- 9. *The removal order shall be communicated in writing to the foreigner, according to the provisions of the Code of Administrative Procedures in a language of his or her understanding, or at least in English language, so as to inform the foreigner of the appeal procedures according to article 107 of this law.*

*Article 107*

***Appeal against the removal order***

*The foreigner, subject to a removal order shall have the right to administrative and judicial appeal according to the legislation in force.*

#### *Article 108*

#### ***Voluntary enforcement of the removal order***

1. *The authority responsible for border and migration shall not enforce the removal order, if the foreigner declares voluntary removal from territory. Declaration of voluntary removal of the foreigner shall be considered by the authority responsible for border and migration and migration when deciding whether to include the restrictive measure of prohibition of entry in the removal order, except for the cases where such declaration may not be considered because of public order and security interests.*
2. *The local authority responsible for border and migration shall give priority to the enforcement of voluntary return especially for the following category of persons:*
  - a) *foreigners, who have stayed illegally in the territory of the Republic of Albania, without leading to detrimental consequences on public order and security and who declare voluntary departure from the territory;*
  - b) *unaccompanied minors;*
  - c) *sick, disabled or handicapped persons;*
  - ç) *parents who have minor children;*
  - d) *victims of trafficking in human beings who wish to return to their country of origin;*
  - dh) *asylum-seekers, whose application for asylum has been refused or who have withdrawn the application for asylum and have no sufficient funds for return;*
  - e) *foreigner who has regular documents, but who have no funds necessary for stay.*
  - ë) *foreigner who are apprehended while working illegally in the territory of the Republic of Albania.*
3. ***The removal order shall not be enforced until the end of the appeal process and the taking of the final decision, unless otherwise provided for by this law.***
4. *The authority responsible for border and migration, in cooperation with international organisations involved in issues of foreigners, shall undertake joint programmes for the provision of financial means, in order to enable the return of foreigners, as mentioned in this article, to the country of origin.*

### **EXPULSION OF FOREIGNERS**

#### *Article 109*

#### ***Expulsion of the foreigner by the authority responsible for border and migration***

1. ***Expulsion of the foreigner by the authority responsible for border and migration is an administrative measure taken for the forced removal of the foreigner from the Albanian territory, based on case by case assessment, if it results that the foreigner:***
  - a) *has entered illegally the territory of the Republic of Albania and there is information that he / she will transit illegally to other countries;*
  - b) *has failed to leave the Republic of Albania within the time limits set in the removal order, based on no objective reason or after removal from the territory and within the time limits of prohibition of entry, the foreigner re-enters into the territory of the Republic of Albania;*
  - c) *has not left the Republic of Albania for a period of up to 60 days after expiry of the period of stay indicated in the visa, residence permit or period of stay foreseen by this law for the*

*citizens who enter visa-free and in case of information that the foreigner intends to abscond the police authority responsible for border and migration;*

*ç) has been readmitted to another country under Readmission Agreements in force in the Republic of Albania;*

*d) has been declared undesirable person according to the provisions of article 9 of this law and his /her presence in the territory is considered a threat to public order and security.*

*dh) has been convicted for a criminal offence which is sentenced to a minimum of three years of imprisonment according to the Albanian legislation.*

*2. If the foreigner is subject to expulsion by the authority responsible for border and migration, according to this article, he or she shall be detained in a closed centre according to article 121 of this law, until the enforcement of the expulsion order. In case other alternatives are found for the enforcement of interim measures, as defined in section IV of this chapter, the latter shall prevail over detention.*

*3. The foreigner who does not hold a travel document must appear in person or accompanied by the competent authorities before the diplomatic representations and consular posts accredited to the Republic of Albania, in order to be supplied with such document.*

*4. If there is no diplomatic representations and consular posts of the country of the foreigner in the Republic of Albania, the central authority responsible for border and migration shall request the issue of the travel document by the country of origin or by the diplomatic representations and consular posts of the country of the foreigner in another country, through the authority responsible for consular issues in the Ministry of Foreign Affairs.*

*5. If the diplomatic representation refuses to issue a travel document, the central authority responsible for border and migration shall issue to the foreigner a standard travel document defined by readmission agreement, which purpose is to enforce forced removal of the foreigner.*

*6. The central authority responsible for border and migration, in implementing this law, may issue laissez passer, if the foreigner is not provided with a travel document according to point 3 and 4 of this article and article 17 of this law.*

*7. The central authority responsible for border and migration, based on the agreements in force in the Republic of Albania may cooperate with other countries for the procedure of return or joint return of foreigners.*

*8. The foreigner shall be informed in writing, in a language of his or her understanding, or at least in English, of the enforcement of the administrative measure of expulsion against him or her, with an explanation of the reason the order is issued, the date and place of enforcement, the manner of transportation to the country of destination and the period of validity of the prohibition of entry. The form of the expulsion order shall be approved by instruction of the Minister of the Interior.*

## **EXPULSION OF THE FOREIGNER, UNDESIRABLE PERSON**

### *Article 111*

#### ***Expulsion order to an undesirable person***

***1. The foreigner, declared undesirable person, shall be expelled from the territory of the Republic of Albania only upon an expulsion order, issued by the Minister of the Interior.***

*2. The expulsion order to an undesirable person shall be communicated in writing to the foreigner in a language that he or she understands or at least in English and it shall contain:*

*a) personal data of the expelled person;*

- b) reasons for which the expulsion order has been issued*
- c) period of prohibition of entry to Albania;*
- ç) in case of readmission, the country where the person will be readmitted;*
- d) date of departure;*
- dh) manner of enforcement;*
- e) border crossing point of departure;*

3. *Information on the detailed reasons of issue of the expulsion order to an undesirable person, which is qualified as classified/restricted information, in particular related with national security, protection, public order and also prevention, investigation, detection and punishment of criminal activities, shall not be communicated to the foreigner.*

#### *Article 112*

#### ***Procedure and enforcement of the expulsion order***

1. *The expulsion order shall be enforced by the local authority responsible for border and migration:*

- a) takes measures for detention of the foreigner in the closed centre or application of interim measures according to the definitions of Section IV of this chapter, until the expulsion order is enforced, according to the specification in the expulsion order.*
- b) takes the fingerprints and palm prints and the photograph of the foreigner;*
- c) records the expulsion order in special record book indicating the period of the prohibition of entry in the Republic of Albania;*
- ç) cancels the residence permit, where appropriate;*
- d) takes measures that the foreigner be supplied with travel document, visa and travel ticket.*

2. *The expulsion order shall enter into force immediately if the presence of the foreigner poses a threat to national order and security.*

3. *If neither the foreigner nor the host have funds to afford the return costs of the foreigner to the country of destination, the return costs shall be granted as a loan, in advance, by the local authority responsible for border and migration and it shall be reimbursed by the host, if the foreigner intends to enter the Republic of Albania after termination of the period of the prohibition of entry.*

#### *Article 113*

#### ***Category of persons who may not be expelled***

1. *The foreigner who meets one of the following requirements shall not be subject to the expulsion order:*

- a) is supplied with a permanent residence permit,*
- b) is born in the Republic of Albania*
- c) has entered the Republic of Albania as an unaccompanied minor and has been supplied with a permanent residence permit;*
- ç) is supplied with temporary residence permit and is married to an foreigner who has permanent residence or who is an Albanian citizen;*
- d) based on grounded reasons to suspect that the foreigner might be punished to death, subjected to torture, inhuman and degrading treatment or punishment for discriminatory reasons in the country of origin or another country;*
- dh) is an unaccompanied minor, if the country of origin, another country or other institutions do not guarantee family reunification or proper health care;*
- e) is a family member of the foreigner who is recognized the refugee status in the Republic of Albania.*

2. *The foreigner, in exceptional cases, may be expelled regardless of the fulfilment of the requirements mentioned in point 1 of this article, if his or her stay poses a threat to public order and security and it constitutes a threat to national security in accordance with the provisions laid down in this law.*

*Article 114*

***Review of the order declaring a person undesirable and of the expulsion order***

*The foreigner or his or her family members may request the administrative review by the issuing authority of the order declaring the person undesirable and the expulsion order to an undesirable person.*

*Article 110*

***Appeal against the expulsion order of the authority responsible for border and migration***

1. *The foreigner shall have the right to appeal against the expulsion order of the authority responsible for border and migration, according to the legislation in force.*

2. *The foreigner, until termination of the appeal proceedings, shall be kept under conditions of alternative measure of supervision or detention in the closed centre, pending immediate removal, according to the order issued for this purpose.*

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

## **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 nonresidents,

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.

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Regulation "On foreign exchange transactions", approved by Decision No. 70, dated 30.09.2009 of the Supervisory Council of the Bank of Albania, as amended by Decision No. 07, dated 28.01.2015, stipulates that in the case of the Republic of Albania capital transfers may be carried out freely and without restrictions.

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

### **Conclusion [0]**

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

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Foreigners employed in the Republic of Albania are required to be provided with a work permit, or work registration certificate, except as otherwise provided in the international agreements recognized by the Republic of Albania, or unilateral position stated by the Council of Ministers' Decision. This article also provides for that the preliminary actions for establishing a business or service activity are not considered as work. (Article 71, "Employment of foreigners", Law No. 108/2013).

foreigners self-employed that have permanent stay in the territory of the Republic of Albania, who are citizens of the European Union or Schengen areas, are exempted from being provided with a work permit, or work registration certificate. The declaration for the activity that they operate is made in the relevant employment office by the self-employed foreigner or the investor where the activity takes place (article 71, Law No. 108/2013).

The category of self-employed is excluded from employment annual quota. Article 83 "Exemption from employment annual quota", letter ç), provides for: "Work permits may be issued in addition to the annual quota for foreigners in cases where they are: ...ç) self-employed in a company that they themselves manage or own more than 51 percent of the shares;"

According to Law No. 108/2013 "On foreigners", self-employed foreigners in the territory of

the Republic of Albania are provided with a work permit type "B / VP" for the self-employed. This type of work permit is part of work permit type "B", for independent economic activity, where besides work permit type "B / VP" is work permit type "B / I" for investors. (Article 86, Law 108/2013).

*Article 99, "Type "B/VP" work permit for self– employed persons", of Law No. 108/2013 on the foreigners provides for: "1.The foreign worker for independent economic activity, as self-employed person, shall be provided with type "B/VP" work permit, limited in time, space and occupation, as defined in the permit obtained for the exercise of the activity. 2. The foreign worker shall be provided with a work permit for self-employed persons only after being registered with the tax office of the seat of activity.*

Law 108/2013 "On foreigners", as amended, defines tasks for state authorities for assistance to the integration of foreigners and their non-discrimination, even for self-employed foreign nationals in the territory of the Republic of Albania. Specifically, Article 143 "Assistance for integration of foreigners", provides for: "The law enforcement responsible authorities must ensure the conditions for integration of foreigners, who have the right of residence in the Republic of Albania, in the economic, social and cultural life, according to the provisions of the legislation in force on integration of foreigners in the Republic of Albania", whereas Article 144 "Institutions and organisations concerned", provides for as follows:

- 1. The public institutions shall cooperate based on their competences, with social partners, non profitable organizations and international organisations for the promotion and implementation of the programmes of integration of foreigners in the society.*
- 2. Public institutions and non profitable organizations shall provide to foreigners, during the exercise of their activities, protection against any form of discrimination.*
- 3. Direct and indirect discrimination by legal persons, public and private, during the entire process of immigration for employment, shall be prohibited.*

## **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.

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In the legal framework, teaching of the language of the country for the children of emigrant workers, asylum seekers and other foreigners, is governed by:

Law No.69/2012 "On the pre-university education system in the Republic of Albania", article 5.

Instruction No.32, dated 26.10.2002 of the Ministry of Education and Science "On the registration and evaluation of pupils who have benefited asylum in the Republic of Albania", setting out all the modalities of registration, integration and education of children in kindergarten and school;

Letter of Ministry of Education and Science No. 9242 prot, dated 10.11.2015, "On the registration and treatment of students returning from emigration", where all Regional Educational Directorates/Educational Offices are instructed for the establishment and functioning of the registration and education system of students returning from emigration

For teaching of Albanian language, for the other members of the families of emigrant workers, the Faculty of History and Philology, the Department of Albanian Language and Literature, offers courses in learning the Albanian language.

In the Republic of Albania, a total of 1076 asylum-seekers were enrolled in pre-university education in the academic year 2017-2018, respectively 167 children in pre-school education, 709 pupils in the 9-year education and 200 students in the secondary education.

An action plan is applied for children with foreign citizenship that are registered with the kindergarten / school, where the following is the main activity:

-Special psycho-social treatment by school psychologist;

- Different work by each teacher to adapt the subject to the level of Albanian language they possess;
- Additional Supplement for Learning Albanian Language with the Albanian Language Teacher in the School;
- Inclusion in school activities that help to learn Albanian language and integrate them.

Children aged 3-6 years of persons who are asylum-seekers in the Republic of Albania are enrolled in pre-school education on the basis of their birth certificate.

If they do not own a birth certificate, they enroll in preschool education according to the parents' testimony and documentation that the child owns in the Directorate of Citizenship and Refugees.

For the school year 2017-2018, 167 children attended pre-school education, respectively 40 children in the first group kindergarten, 28 children in the second group of kindergartens and 99 children in the third group of kindergarten.

The student who has been granted asylum in the Republic of Albania to continue 9 years of secondary education is enrolled on the basis of a school certificate of the coming State, translated and notarized and initialed in the Regional Educational Directorate / Educational Office (RED / ZA ), according to the settlement where he is located. The student is enrolled in: a) the next grade when coming to the beginning of the school year; b) the relevant class, when coming during the school year.

If a 9-year-old pupil does not test the country's school text from the continuation or completion of a class, it is proven for the degree of knowledge from a special committee set up in the RED / EO. The Committee drafts the respective minutes signed by all its members. On the basis of this record deposited in the RED / EO, the RED / EO Director issues the certificate for the student enrollment in the class approved by this commission. The school in which the student is enrolled holds the abovementioned certificate on his math.

A pupil who has completed 8 years of schooling is enrolled in the 9th grade with or without disengagement by age.

For the academic year 2017-2018, a total of 709 asylum-seekers attended the 9-year education, respectively 82 in the first grade, 81 in the second grade, 105 in the third grade, 83 in the fourth grade, 87 in the fifth grade, 82 in the classroom six, 65 in the seventh grade, 62 in the eighth grade, 64 in the ninth grade.

In total 200 asylum students attended secondary school during this school year, respectively 71 in grade 10, 63 in grade 11, 59 in grade 12 and 7 in grade 13.

Below the summary table of asylum children according to RED / EOs, levels of education and type of institution.

No.	Regional Education Directorates	Total			Kindergartens		Primary 9-year basic education		Secondary education	
		Total	Public	Private	Public	Private	Public	Private	Public	Private
1	Berat	0	0	0						
2	Bulqizë	0	0	0						
3	Delvinë	1	1	0			1			
4	Devoll	0	0	0						
5	Dibër	22	22	0	5		17			
6	Durrës	55	0	55		11		40		4
7	Elbasan	21	11	10	2	6	8	3	1	1
8	Fier	10	3	7		2	3	4		1
9	Gramsh	0	0	0						
10	Gjirokastër	0	0	0						
11	Has	0	0	0						
12	Kamëz	2	2	0			2			
13	Kavajë	10	10	0	1		8		1	
14	Kolonjë	0	0	0						
15	Korçë	2	1	1			1			1
16	Krujë	5	5	0			5			
17	Kuçovë	2	2	0			2			
18	Kukës	0	0	0						
19	Kurbin	6	6	0			5		1	
20	Lezhë	13	0	13		4		7		2
21	Librazhd	0	0	0						
22	Lushnjë	5	5	0			3		2	
23	M. e madhe	0	0	0						
24	Mallakastër	2	2	0			2			
25	Mat	0	0	0						
26	Mirditë	0	0	0						
27	Peqin	0	0	0						
28	Përmet	0	0	0						
29	Pogradec	6	2	4		3	1		1	1
30	Pukë	0	0	0						
31	Sarandë	5	3	2		1	1	1	2	
32	Skrapar	0	0	0						
33	Shkodër	128	33	95	5	5	26	41	2	49

34	Tepelenë	0	0	0						
35	Tirana town	733	73	660	7	109	47	443	19	108
36	District of Tirana	14	14	0	4		9		1	
37	Tropojë	0	0	0						
38	Vlorë	34	8	26		2	6	23	2	1
	Total	1076	203	873	24	143	147	562	32	168