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REVISED EUROPEAN SOCIAL CHARTER

REPLIES TO SUPPLEMENTARY QUESTIONS

6th National Report on the implementation of
the Revised European Social Charter

submitted by

THE GOVERNMENT OF ALBANIA

(Articles 7, 8 and 19
for the period 01/01/2007 – 31/12/2009)

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CYCLE 2011

ALBANIA

ADDITIONAL INFORMATION RELATED TO ARTICLE 8 AND 19 OF REVISED EUROPEAN SOCIAL CHARTER

Article 8, Paragraph 1;

Under Law No. 7703 of 11 May 1993 “On social insurance in the Republic of Albania”, and the amendments as made to this law, the principle concerning person’s equal treatment and non-discrimination on the grounds of has been maintained. This law provides for equal rights and obligations for both genders in relation to social insurance. Therefore, Article 2 of this law defines: “All economically active persons (employers and self-employed) shall be protected by compulsory social insurance”. Article 6 prescribes: “It shall be compulsory for the social insurance to protect all economically active citizens in Albania in case of incomes reduction as a result of maternity, senior age, disability and loss of household supporter”. Thus, the law does not set any distinction and it provides for equal treatment of economically active women in the public and private sector.

Articles 26, 27, 28 and 29 of Law No. 7703 of 11 May 1993 “On social insurance in the Republic of Albania” provide for the benefits to be awarded to women in the case of maternity, pregnancy compensation and a bonus for giving birth to the child.

Article 26, point 1. “The maternity benefit shall be paid to the insured woman for her pregnancy and childbirth, when she has 12 months insurance, for each case of benefit.”

2. The maternity benefit will be 365 calendar days, including a minimum of 35 days before and 42 days after the childbirth. For the woman, who is pregnant with more than 1 child, the maternity benefit will be 390 calendar days, including a minimum of 60 days before and 42 days after the childbirth.

3. The maternity benefit for the insured woman will be as follows:

- 80 percent of the daily average of the estimated base rate of the last calendar year for the pre-birth period and 150 calendar days for the post-birth period;

- 50 percent of the estimated base rate of the last calendar year for the rest of the following period.

4. Maternity benefit for economically active women will be equal to the base rate of age pension.

5. Mother who adopts a child up to 1 year old, and who has been insured for no less than 12 months, enjoys the right to post-birth maternity leave, which begins as of the adoption day, but not earlier than after the 42nd day of the child’s birth, while it continues for no more than 330 days after the day of child’s birth. The minimum leave for the adopter is 28 days.

6. When a child is adopted during the maternity leave, the mother who gave birth to the child will have a benefit time up to the day of the adoption, but not less than 42 days following the birth.

Article 29 of law No. 7703 of 11 May 1993 “On social insurance in the Republic of Albania” “Childbirth bonus”

“Bonus for giving birth to a child is awarded to an insured person, who is either the mother or the father of the born child, on condition that one of them has paid contribution for one year before the childbirth.”

So, the qualifying period of 12 months for an employed woman who receives maternity benefit covers the period from 01 January through 31 December of prior year, before the maternity benefit. Thus, it is not 12 months starting from the time when the woman will begin receiving maternity benefit. The annual salary, on the basis of which the maternity benefit will be estimated, will mean the salary, on which the social insurance contribution has been paid.

The unemployment period is included in the qualification period of maternity benefit, because during this time the employer pays social insurance contribution.

As well as the Labour Code of the Republic of Albania and regulations issued pursuant to it, which provide rules for issues as covered by Article 8 of the European Social Charter are applied for women employed in the public and the private sectors.

Referring to the 12-month period, during which employed women benefit protection under the Albanian legislation, we hereby clarify that the Labour Code provides for interruption of the work by women 35 days before the birth and 42 days after the birth, while the payment that the woman receives when she is on maternity leave are defined by the social insurance law. Moreover, the Labour Code defines that, after the 42 days post-birth period, it is the woman who makes a decision whether she is willing to work or to obtain social insurance benefits.

Article 107 of the Labour Code considers termination of the employment contract as invalid, when the pregnant woman is willing to obtain social insurance benefits in case of birth or adoption. Meanwhile, the protection as required in Article 8, Paragraph 2 of the European Social Charter is provided for in Article 146, Paragraph 1 of the Labour Code “Contract termination on invalid reasons”. It defines that termination of employment contract by the employer is deemed as a termination based on invalid reasons when performed for motives, which are inseparable from the worker’s personality, but which have no legitimate relevance to occupation. Therefore, pregnancy is considered such a motive. Additionally, Paragraph 3 of this Article specifies that contract termination on invalid reasons is void and the employer must award to the worker (in this case the pregnant woman) a compensation of up to one-year salary.

Article 8, Paragraph 2;

Article 28, of the Law No. 7703 of 11 May 1993 “On social insurance in the Republic of Albania”, lays down provisions, which entitle the ensured woman, when she is pregnant, to benefit income compensation if the latter is reduced in cases of changing the occupation due to pregnancy reasons. Incomes rate to be compensated will be equal to the difference between prior occupation salary and the new occupation salary.

Cases of notifications of illegal dismissals of women during pregnancy or after giving birth to the child are not set forth in the social insurance law, but in the Labour Code, instead.

Article 28 “Income compensation due to pregnancy”

1. The insured woman who changes her occupation upon the decision of the competent medical commission has the right to benefit income compensation for the reduction that results from changing the occupation. This compensation is awarded when contribution has been paid for no less than 12 months.

2. The amount of incomes to be benefited from compensation is equal to the difference between prior occupation salary and the new occupation salary. This compensation may not exceed 50 percent of the daily average of the estimated base of the last calendar year.

Finally, concerning the right of breastfeeding mothers to adequate work interruptions for this purpose until their child becomes nine months old, we hereby explain that the social insurance law provides for the right of the breastfeeding mother to benefit until the child becomes 1 year old. Under Decision No. 397 of 20 May 1996, in cases when she decides otherwise, she has the right to take leave and to ask for periodic breaks during the day, on condition that this has to do with this reason.

In the frame of amendments as envisaged to be made to Albanian Labour Code, it is assumed to add a third paragraph to Article 105 to define that, if the woman decides upon her will to work after the 42-days post-birth period, in agreement with the employer, regarding child breastfeeding, she will have the right within the timeline set forth in the social insurance legislation re: the right to maternity award, to benefit the following:

- a) Reduced working hours with the same payment as if she had worked during the normal daily working hours; or
- b) A paid break of two hours within the normal working hours.

Article 19, paragraph 3

Article 8, Paragraph 1 of Law No. 9668, dated 18 December 2006 “On the emigration of Albanian citizens for employment reasons”, as amended, stipulates the obligation of responsible state authorities to provide information, *inter alia*, also about social protection in the countries of origin and hosting countries.

In addition, Paragraph 1.1 of Article 8 provides for the establishment of Migration Windows in the capacity of institutions providing this information to Albanian citizens.

“1/1. The Migration Windows providing information service for the Albanian citizens willing

to emigrate, as well as, support for the reintegration of returned emigrants, shall be established in the relevant Employment Offices.”

Actually, 36 Migration Windows, which provide various kinds of information to Albanian citizens who are willing to emigrate or who have returned from emigration, have been established across the entire country.

The Ministry of Foreign Affairs enables the availability of this information also in the Albanian embassies abroad.

Article 17, Paragraph 2 of Law 9668/2006 defines: “Emigrant workers shall enjoy equal treatment like the citizens of the hosting countries concerning working conditions, payment of social insurance, and membership in trade unions, irrespective of race, sex and religious faith”.

Article 34 of this Law defines: “Social insurance of Albanian emigrants, who are duly employed, shall be regulated under the social insurance legislation of the Albanian state and of the country receiving them, bilateral agreements in this field, and under international social insurance conventions, in Albania is a party”.

Article 28 of Law 9968/2008, as amended, defines: “Ministry of Labour, Social Affairs and Equal Opportunities in cooperation with the State Social Service and Local Government Units shall be responsible for providing social care services for returnees, in addition to the support concerning filling out of the application for benefiting social assistance”.

Article 19, Paragraphs 3, 4, involves the parties in promotion of cooperation between social services, public and private, in emigration and immigration countries in the emigration and immigration countries, as well as, in ensuring of equal rights and not less favourable treatment than that of its own citizens concerning salaries, working conditions and membership in trade unions, and enjoyment of collective negotiations benefits.

Instruction No. 1945 of 04 October 2010 of the Minister of Labour and Social Affairs “On the implementation of Council of Ministers Decision No. 617 of 07 September 2006 ”On defining the monitoring and assessment indicators of social assistance programs, payment of persons with disabilities and social services”, has set as a statistical indicator for social services the number of needy foreign clients and the number of benefiting foreign clients who benefit services in the residential or daily, public or private social care institution for children, young persons, senior age women and persons with disabilities.

One of the novelties of the new law on foreigners compared to the prior law includes sanctioning by law of the right to equal treatment with Albanian citizens in terms of working conditions, including the provisions on dismissal and remuneration, work conditions sanitation, technical safety, participation in vocational training, the latter on condition that they have the right of stay and employment in the territory of the Republic of Albania for a time longer than one year.

Moreover, a specific article provides for the freedom of organization and membership in a trade union or occupational organization, which represents the workers, self-employed and employers, including also advantages deriving from participation in these organizations.

Article 19 paragraph 4

With the adoption of Law No. 10 221, dated 04 February 2010 "On the protection against discrimination", the Albanian State has made a step ahead towards protection of human rights and freedoms pursuant to the process of its internal legislation approximation to EU *acquis*. This law was promulgated upon Decree No. 6433 of 24 February 2010 of the President of the Republic of Albania and it was published in the Official Journal No. 15, dated 25 February 2010.

Upon the adoption of this Law, Albania has fully approximated its internal legislation to the following EU Directives:

- Directive 2004/43/CE, dated 29 June 2000 "On implementing the principle of equal treatment between persons irrespective of racial or ethnic origin".
- Council Directive 2000/78/EC of 27 November 2000 "On establishing a general framework for equal treatment in employment and occupation".
- Council Directive 2004/113/EC of 13 December 2004 "On implementing the principle of equal treatment between men and women in the access to and supply of goods and services".
- Directive 2006/54/EC of the European parliament and of the Council of 5 July 2006 "On the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation".

Article 4 of Law No. 10 221 of 04 February 2010 "On the protection against discrimination" provides for the application of this law to the following:

- All persons living and staying in the territory of the Republic of Albania;
- Albanian citizens with a temporary or permanent residence outside the borders of the Republic of Albania, in the relations with the Albanian state bodies;
- Foreign physic or legal persons with residence, place of stay, or headquarters outside the territory of the Republic of Albania, in the relations with the Albanian state bodies.

In this manner, such a stipulation provides protection also for foreigners living and staying in the Republic of Albania in compliance with the laws in force. This law has addressed in one of its chapters and, more specifically, in Chapter II "Protection against discrimination in employment", discrimination in the filed of occupation. Article 12 of this law has provided the stipulations as described hereunder, and in reference to Article 4 of the law, these stipulations additionally cover migrating workers.

"Article 12

Prohibition of discrimination

1. No discrimination of a person related to the right to employment shall be allowed. Discrimination shall include any distinction, restriction or exclusion, which is based

on the causes, which are mentioned in Article 1 of this Law and, which, inter alia, have to do with the following:

- a) announcement of vacancies;*
- b) workers recruitment and selection;*
- c) workers' treatment in their workplace including their treatment when determining or changing the work conditions, remuneration, benefits and work environment, treatment about vocational training, or during the disciplinary process, or in relation to dismissal or termination of employment contract;*
- d) Membership in unions and the possibility to benefit from the advantages that this membership provides.*

2. No harassment, including also sexual harassment, of the employer against a worker, a jobseeker or between workers shall be allowed.

3. Enforcement of ad hoc and temporary measures, based on the causes as mentioned in Article 1 of this Law, to accelerate employment equality, shall not be considered discrimination. Enforcement of such measures may not imply in any case permanent maintaining of unequal or different standards and existence of ad hoc measures shall come to an end when the goal of equal treatment and of the provision of equal opportunities is achieved. ”

Article 13 and 14 of the Law provide for the obligations of the employers and state institutions including the Council of Ministers, Minister of Labour, Social Affairs and Equal Opportunities and the Minister of Interior.

More specifically, Article 13 provides for the obligation of the employer re: the following:

- To enforce, protect and promote the principle of equality and prohibition of any kind of discrimination;
- To take necessary measures, including also disciplinary measures, to protect the workers against discrimination and victimization, within one month of receiving notification;
- To respond effectively and in compliance with the law to the complaints as received due to discrimination caused by his workers, within one month of receiving them.

Under this Article, the employer is obliged to raise awareness about this law by means of posting it in public spaces of the workplace, in addition to enabling its full understanding with its own means, or with the support of specialised entities.

Article 4 defines that the Council of Ministers, Minister of Labour, Social Affairs and Equal Opportunities and the Minister of Interior are each responsible for taking measures of positive character to tackle discrimination concerning the right to employment. The measures to be taken include, *inter alia*, the following:

- Enhancement of awareness of the worker and employer, among others, by providing information about this law;
- Setting of ad hoc and temporary policies based on the causes mentioned in Article 1 to promote equality, in particular, between man and woman, as well as, between persons with full disability and those with disability.

To achieve effective protection against discrimination and against any form of behaviour, which encourages discrimination, Article 21 of the law provides for the establishment of Commissioner's institution as a legal public person, with its own independent budget, which is funded by the State Budget and different donations.

The Commissioner's Office of Protection against Discrimination (the Office) supports the Commissioner to carry out the tasks assigned by law. The Office has the staff and necessary equipments to support the Commissioner to perform the duties and assigned by law.

It is the Parliament, which decides about the Commissioner's salary, the organization chart and salaries classification for the staff of the Commissioner's Office of Protection against Discrimination. Staff of this Office enjoys the civil servant status.

Article 19 paragraph 6

For family reunion of a foreign employee according to Law no. 9959, dated 17.07.2008 "For foreigners", are foreseen the following conditions:

- 1.To provide appropriate environment and living conditions
- 2.To have the necessary income for his family
- 3.To provide medical care

For the above-mentioned conditions in the Chapter III, Point 4 of the Decision of the Council of Ministers no. 362 dated 01.04.2009 "For the establishment of criteria, procedures and necessary documentation for the entry, stay and treatment of foreigners in the Republic of Albania", it is also required the following:

- a.The bargain contract or the leasing contract, with the adequate surface for the members of the family after the family reunion.

To verify the other two conditions, we are at the improvement stage of our legislation in compliance with the requirements of the EU recommendations, and in this DCM paragraph, we will define the necessary documentation for the verification of the necessary income for the family, as well as the health insurances for the whole family that apply for family reunion.

Pursuant to the abovementioned legislation, we can mention just one case of refuse of Stay of Permit for the wife of one foreign citizen who did not fulfil the necessary deadline of the legal stay in Albania. (1 year).

APPENDIX

SECRETARIAT GENERAL

DIRECTORATE GENERAL OF HUMAN RIGHTS
AND LEGAL AFFAIRS

DIRECTORATE OF MONITORING

DEPARTMENT OF THE EUROPEAN SOCIAL CHARTER
THE HEAD OF DEPARTMENT
EXECUTIVE SECRETARY OF THE EUROPEAN COMMITTEE
OF SOCIAL RIGHTS

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Ms Albana Shtylla,
Director of the Legal Department
Ministry of Labour, Social Affairs and
Equal Opportunities
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TIRANA
Albania

Strasbourg, 15 April 2011

Dear Ms Shtylla,

The European Committee of Social Rights is currently examining the sixth report from Albania on the Revised European Social Charter and has instructed me to forward to you the enclosed questions concerning Articles 8 and 19.

The Committee would be grateful if you could reply to these questions before 3 June 2010 in order to allow the information to be taken into account in Conclusions 2011.

Yours sincerely,



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15 April 2011

Question in respect of the 6th report of Albania

Article 8§§1-3

- Does the same legal framework, regarding all matters covered by Article 8 of the Revised Charter, apply to women employed in both the private and public sectors? If not, please provide information on the way women employed in the public sector are protected in respect of the different paragraphs of Article 8.
- Article 8§1: How is the qualifying period of 12 months, which entitles employed women to maternity benefits under Albanian law, calculated (e.g. does this period correspond to the twelve months that directly precede maternity leave, or twelve months computed over a longer reference period such as 24 months, etc.)? Are periods of unemployment taken into account when computing the qualifying period?
- Article 8§2: Does the protection afforded in Article 107 of the Labour Code extend to women from the moment they notify their employers of their pregnancy? What are the remedies available to pregnant women or women on maternity leave, as covered by Article 8§2, who have been illegally dismissed?
- Article 8§3: Are paid breastfeeding breaks available for employed women up until their child reaches the age of nine months?

Article 19§§3,4, 6

Article 19§3: The information provided in the 6th 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. Bearing in mind the existing legislation, a description on the contacts and information exchanges established by Albanian social services in emigration and immigration countries is required.

Article 19§4: The information provided in the 6th report is not sufficient to determine the absence of discrimination of migrant workers. Updated information proving the absence of such discrimination, or on any possible measure taken by Albanian authorities to eliminate it, is required.

Article 19§6: The Law on "Foreigners" No. 9959 of 17 July 2008 refers to a number of conditions to be respected in relation to family reunion. 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"*. This provision should be clarified. Further information on the implementation of the legal framework relating to family reunion, in particular the number of applications granted and turned down, is required.