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EUROPEAN SOCIAL CHARTER (Revised)

3rd National report on the implementation of
the Revised European Social Charter

submitted by

THE GOVERNMENT OF ALBANIA

(for the period 2005-2006) on
Articles 1, 20, 24, 25

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**REPORT ON ARTICLES 1, 20, 24, 25 OF
REVISED EUROPEAN SOCIAL CHARTER**

ALBANIA

Article 1, paragraph 2 and 3

Law No. 7995 dated 20.9.1995 “On promoting employment” has been amended with law no. 9570, Dated 3. 07. 2006 “On some additions and amendments in law nr. 7995 dated 20.09.1995 “On promoting employment” (as amended)”

The purpose of the recent changes to the above-mentioned law was: (i) to improve the definitions already contained therein and to introduce new definitions concerning various programs and categories of people benefiting from this law; (ii) to introduce the concept of employment services as a fundamental service in the job market implemented by the employment offices; (iii) to introduce the job and profession counselling and orientation as part of employment services; (iv) to draft new projects such as internships for higher education graduates; (v) to change the procedure of training funds management since the law no. 8878 dated 19.03.2002 “On education and vocational training in Albania” has become effective and the framework statute for the public centres of vocational training has been approved.

The improvement of law’s definitions and the introduction of new ones, namely the basic terms such as “employment” “job seeker” “appropriate employment” “employment services”, “job and profession counselling” which constitute the most important technology of the law, have happened as a result of their evolvement throughout the years of the law’s implementation. Such changes and amendments to the terminology have also evolved by the experience gained from the collaboration with various European countries institutions. The improvement of such terms will bring about a better performance of the employment offices making it clear to them the categories of people they deal with and their categorization according to the services offered by such offices.

The concept of employment services has also been introduced, which constitutes the fundamental activity of the employment offices. Employment services include employment mediation services, job and profession counselling as well as information on new job vacancies. The employment services are the fundamental source for ensuring information on the job market. The information they provide includes detailed information on the job vacancies and the job seeking candidates. Employment services are also the fundamental source for ensuring information on the job market. The information they provide includes detailed data on the job vacancies and the job seekers. Employment services aim at counselling and orienting the job seekers in choosing a career as well as those people who are looking at refocusing their career perspectives. Such services offer information on trainings and training opportunities and serve as one of the sources for filling the employers’ job vacancies. As stated above, they constitute an important source of information in the dynamics of the job market for formulating and implementing the policies of this market.

The improvements consist also in other employment services components such as employment mediation and profession and employment counselling and orientation. The law aims at improving the employment mediation program, which is the major part of employment services. The aim is also that the employment mediation services offer a high quality public service, find the best possible job for the unemployed job seeker, and help the employers find the best candidate for their vacancies. Employment mediation covers several services for the job seekers. They are often an important source of support for those jobseekers encountering difficulties in finding a job and especially for the employers encountering difficulties in finding candidates for their vacancies. The law does also provide for profession and job orientation services as an important component of employment services.

The law introduces a new program. "the internships" which means that job seekers who have graduated from higher education institutions in the country or abroad, can work as interns at the private or public institutions or enterprises in order for them to get familiar with the activity of the institutions/enterprises and thus have bigger chances for employment. The employers admitting interns into their institutions or enterprises will be financially supported. The necessary funds for the implementation of this program will be drawn from the state budget fund for promoting employment.

The effective law on education and vocational training in Albania and the approved framework statute for the public centres of vocational training, require the change of procedures in training management funds. For this purpose the financing of vocational training courses offered by both public and private centres for vocational training has been anticipated, subject to competition the rules for which shall be established by a Council of Ministers' (CoM) decision.

The law does also improve the concept of the local three-party councils which are established next to the employment offices and have a consultant's role. The existing law defined duties of such council related to programs which did not exist in the law and thus were not implemented. Meanwhile the role of such councils has been the approval in principle of the social economic benefit of the public works projects initially and later on those of employment promotion. The role of these councils has been increasing and for this reason it has been anticipated that the duties and the composition of the three-party local councils shall be approved by the Three-party Administrative Council of the National Employment Service which is the highest decision-making of the national employment service. Being that the composition of the Administrative Council is a three-party body with representatives from the social parties and the government, we think that the composition and the competences of the three-party local councils be regulated by this Council. The above is actually foreseen in the charter of the National employment Service.

The changes to the law have been made in compliance with ILO's convention no. 168 concerning "Employment Promotion and Protection against Unemployment", which is under the ratification process, as well as in compliance with Reviewed European Social Card ratified by the Republic of Albania. The policies contained therein are in consistence with EU Council resolutions and decisions.

The law is in compliance with the Constitution of the Republic of Albania and it shall apply its principles, namely the observation of the right of all citizens to make their living with a legal job they have chosen and accepted themselves as well as the objective of the government for the employment in suitable conditions of all people capable of work.

For the implementation of this law, **CoM decision no. 873, dated 27.12.2006** "On the amount of financing, the criteria and the procedures for the implementation of the internships programs for the unemployed job seekers who have graduated from higher education institutions in or out of the country" has been approved along with the respective Instruction for the implementation of this decision. This CoM decision aims at developing human resources and enhancing the vocational level of the work force, which is an indispensable condition for the remedy not only of the unemployment problem but for the overall development of the country's economy in general. The attraction of foreign investments and the success of internal investments, which are indispensable for the Albanian economy, cannot be achieved without first having a certain level of vocational among the work force which has become the most attractive factor for the investors and for the success of the investments. In the framework of active policies, the vocational training of human resources especially of the young people constitutes a national obligation which promotes employment.

It is also focused in the young people category that has just graduated from universities in and out of the country and is unemployed because of the lack of working experience. This is why these young people will be included in internship programs in public or private institutions or enterprises. The young people will have the opportunity to gather the necessary experience in order to obtain a long-term employment.

The duration of internships shall be 6 months. The state/public institutions will admit the recently graduated unemployed people free of charge. The later shall receive a financial support equal to 100% of the value of the unemployment payment. The private institutions/enterprises will receive financial support for each intern they admit. The financial support shall be equal to 100% of the value of the unemployment payment. The enterprise/organization shall assign a mentor who will be in charge of preparing the training program, accommodation, the smooth ongoing of the internship and the final evaluation of the intern. At the end of the internship program, the intern shall receive an internship certificate of evaluation.

The CoM Decision no. 223, dated 19.04.2006 "On the unemployment payment" and the respective implementation guidelines.

149 thousand unemployed persons or 13.8 % of the active working force are currently registered in the employment offices. From them, 11 thousand benefit from the unemployment payment scheme. According to the law "On promoting employment", the unemployment payment is part of the government passive employment policies implemented by the National Employment Service, aiming to guarantee a fix income in case of unemployment, when no other employment alternatives exist and to support job seekers in their efforts in searching for a new job.

The unemployment payment program offers financial security to job seekers in search for another job and reduces as well the social tensions arising during periods of economic crisis when unemployment reaches to high levels. Currently, the minimal level of the unemployment payment is 5240 ALL per month with extra monetary compensation for the increase of electricity, food and bread prices, as well as allowances for dependent children according to the abovementioned law. The amount is indexed yearly by a Council of Ministers Decision.

The treatment of unemployed persons with unemployment payment is based on Law No. 7703, dated 13.05.1993 "On Social Insurance in the Republic of Albania" that has introduced with its latest amendments (2005) new concepts on the benefiting terms, payment percentages for dependent children and the benefiting period. Therefore, the new decision reflects all the amendments introduced by the abovementioned law. Since the law has had more amendments related to other social insurance schemes, the legal basis to abrogate the existing ones was also reviewed.

The CoM Decision defines the benefiting period and terms, the benefiting groups as well as other implementing procedures. The Decision foresees that in case of repeated benefits from unemployment payment, the payment periods should be shorter than the normal ones. This will reduce possibilities to enter/exit the scheme for illegal benefits.

The current active measures in the job market that promote the employment, allow for a greater involvement in the employment and training programmes of unemployed persons benefiting from unemployment payment, as reflected by the amendments of law no. 7703, dated 11.05.1993 "On social insurances in the Republic of Albania" that emphasize their obligation to accept offered jobs according to their profession, age, qualifications etc, in order to shift from passive to active support.

Regarding the **CoM Decision no. 224, dated 19.04.2006** "On establishing the minimal level of unemployment payment", we would like to clarify as follows: According to law no.7703, dated 11.05.1993 "On social insurance in the Republic of Albania", the unemployment payment is based on article 54, point 1, providing that: "The unemployment payment is a minimal payment that guarantees at least

a minimal living standard and is yearly indexed by a Council of Ministers Decision, according to the calculation of the price index for selected goods."

The average unemployment payment includes:

Unemployment payment + a monetary compensation for bread, food and electricity and social assistance (according to specific CoM Decisions), respectively:

- Electricity per dependant person 350 – 700 ALL per month
- Food per dependant person 200 ALL per month
- Compensation per dependant persons 414 ALL per month
- Compensation for the change of the bread price 214 ALL per month

According to this decision in 2006, the minimal level increased with 15%, from 4360 ALL/month to 5240 ALL/month, reaching up to 7800 ALL/month including the allowances.

Article 20, point c

Employment conditions and working conditions, including the salary.

Question A

Answer

The employment conditions, work conditions including the salary are protected by:

Constitution of Republic of Albania and Law no 7961, dated 12.7.1995 Labour Code of Republic of Albania, amended.

Question B

Answer

The legislation provides for the right to work, non-discrimination in salary and the competent authority for the implementation of legislation is:

Article 49 of the Constitution of Republic of Albania, where there is foreseen: Each has the right to acquire his means of living through legal work he has chosen or accepted himself. He is free to select the profession, work place and the system of his professional training.

Article 18 of Constitution of Republic of Albania, point 2 provides that no one can be discriminated unfairly for such causes as gender.... etc.

Article 9 of the Labour Code where there is forbidden discrimination due to sex... etc.

Chapter V of the Labour Code provides for “establishment of the individual labour relations”, Article 12 provides for the individual contract and Article 13 for the collective contract. At the same time, Article 21 provides for the individual contract form of labour.

Article 115 of the Labour Code provides for “Equality in reward between sexes”.

Chapter XIV of the Labour Code provides for the “ending of employment relations, duration of labour contract, procedure of solution of the contract by the employer and Article 148 regulates “Collective dismissal from work”.

The competent authority responsible for the implementation of labour legislation is the Labour State Inspectorate which carries out its activity in line with the law no 9634, dated 30.10.2006 “On labour inspection and Labour State inspectorate”.

Article 24

The right to protection in cases of termination of employment

With a view to ensuring the effective exercise of the right of workers to protection in cases of termination of employment, the Parties undertake to recognise:

- a. the right of all workers not to have their employment terminated without valid reasons for such termination connected with their capacity or conduct or based on the operational requirements of the undertaking, establishment or service;
- b. the right of workers whose employment is terminated without a valid reason to adequate compensation or other appropriate relief.

To this end the Parties undertake to ensure that a worker who considers that his employment has been terminated without a valid reason shall have the right to appeal to an impartial body.

Legislation

Labour Code of the Republic of Albania.

Question A

Answer

Code of Labour, Article 153 “Justified reasons”.

The employer and the employee, in every moment, can terminate their contract for justified reasons.

Justified reasons are considered all the serious circumstances which do not allow, in accordance with the principles of good faith, that the continuation of the work relations might be demanded to the party which has terminated the contract.

The court decides if there are justified reasons for the immediate termination of the contract. The cases when the employee violates the contractual obligations due to serious fault, as well as the cases when the employee violates the contractual obligations due to non-serious fault, in a repeated manner, despite the written notice of the employer, are considered as justified reasons.

Code of Labour, Article 154 “Immediate justified termination of the contract by the employer or the employee”.

The working contract is terminated through its immediate termination.

When the justified reasons for the termination of the contract with immediate effect are linked with the failure to respect the contract by one of the parties, that party has to offer full remedy for the damage caused to the other party, as a consequence of the failure respect the notification timeframe.

The court, in the cases when the employee violates the obligations due to serious fault, decides that the employer is released from the obligation to pay the compensation of damages foreseen in article 144/5.

The employee, who was dismissed from the job in an immediate and justified manner, loses the right of compensation of seniority in the job but retains the right to compensation for the unused leave. Any other claim arising from the working relations may be subject to judicial review.

Code of Labour, article 144 “The procedure of termination of the contract of work by the employer”

After the probation period, when the employer wants to terminate the contract of work, he has to notify the employee at least 72 hours before the meeting and discuss with him.

The employer, during this time, explains to the employee the reasons of the decision foreseen to be taken and grants him the possibility to express himself.

The termination shall be notified in written within a timeframe from 48 hours to one week after the meeting. This procedure is applied also in the cases of the immediate termination of the contract.

The employer who does not respect the procedure established in this article is obliged to grant to the employee a compensation of two months wage, which comes in addition to potential other compensations. The termination of the contract contrary to this disposition remains valid.

The employer has to prove that the procedure provided for in this article has been respected. This provision is not applied in the cases of mass dismissals from work.

Code of Labour, article 157 “Death of the employee”

The contract is terminated by the death of the employee. In such case, the employer has to pay to the employee the wage of one month, starting from the date of his death, the wage of two months if the work relations have continued for more than 3 years, and if the employee leaves behind the spouse, minor children or in their absence, other persons as foreseen in the Family Code.

Question B

Answer B

Code of Labour, article 146 “Termination of the contract without justifiable reasons”

The termination of the contract by employer is considered without justifiable reasons:

- a. when the employer presents claims deriving from the work contract;
- b. when the employer has fulfilled a legal obligation;
- c. when it is done for reasons which cannot be separated from the employee's personality but which does not have legitimate links with the working relations. Such motives are considered to be race, colour, sex, age, civil status, family obligations, pregnancy, religion, political convictions, nationality, social status;
- d. when it is done for motives linked with the exercise by the employee of a right granted by the Constitution, but which does not cause the violation of obligations deriving from the work contract;
- e. when it is done for motives of membership or lack of membership of the employee in a trade union created as per the law or for motives of his participation in the trade union's activities as foreseen by the law.

If the contract is terminated without justifiable reasons, the employee is entitled to bring the employer before the court within 180 days since the day when the notification timeframe expires. In case when an abusive motive was identified after the expiry of such timeframe, the employee can present a lawsuit within 30 days from the day this motive was identified.

The termination of the contract without justifiable reasons is invalid. The employer who has terminated the contract without justifiable reasons shall be obliged to give to the employee a compensation p to one year of wages, in addition to the wage the latter is entitled to during the notification period. Regarding the employees of the public administration, when a court decision

rules for their return to the previous work place, the employer is obliged to apply this decision

The burden of proof stands with the employee.

Question C

Answer C

This is applicable for all companies, regardless of their size.

Question D

Answer D

There are no categories excluded from protection by law in such cases.

Code of Labour, article 149 “Termination”

The time limited contract terminates at the end of the period foreseen, without any preliminary termination. When, after the termination of the foreseen limit of time, the contract is implicitly extended out of these limits, it shall be considered as an indefinite contract.

Code of Labour, article 150 “The probation period”

The parties may provide in written for a probation period not longer than 3 months. There can be no probation period when the parties had previously a work contract, which had as goal the carrying out of the same work.

The notification period during the probation period is five days. If the contract is not abrogated within the probation period, this will be included in the time length of work in the definite contract.

Code of Labour, article 151 “The long term contract”

When several subsequent definite contracts were reached between the parties for a period of not less than three years, the failure to repeat the last contract by the employer shall be considered as a termination of the indefinite contract.

When the contract is reached for a period from three to five years, it can be terminated by the employee after three years. In this case, the timeframe for notification is two months and is extended until the end of the second month.

When the contract is reached for a period of more than five years, it can be terminated by the employee after five years. In this case, the timeframe for notification is three months and is extended until the end of the third month.

Code of Labour, article 152 “Compensation due to seniority”

At termination of the work relations which have continued for not less than three years, the employee shall benefit from a compensation for seniority as in the case of the termination of the definite contract by the employer.

Article 25

Legislation

Labour Code of the Republic of Albania.

Question A

Answer A

Based on Article 124/2 of the Labour Code, in case the employer is unable to pay, the obligations of the employer towards the employees, up to a general sum of not less than 5 months minimum wage, have priority from all the other obligations even when such obligations are guaranteed from real estates.

Question B

Answer B

According to Article 124/1 of the Labour Code, unable to pay means the status related to assets of the employer and has the intention to pay the creditors, as well as the case when the obligation of the employer towards the employee can not be paid because of the financial situation of the employer.

Question C

Answer C

According to Article 124/2 of the Labour Code, in the cases when the employer is unable to pay, its obligations towards the employees, up to a general amount of not less than 5 months minimum wage, shall have priority towards all other obligations even when such obligations are guaranteed by real estates. In point 3 of this article it is also established that priority obligations of the employer towards the employee are not suspended by the bankrupt procedures.

Question D

Answer D

There are no exceptions for any employee category.

Question E

Answer E

According to article 124/2 the employer is obliged to pay to the employee with priority a general amount not less than 5 months minimum wage.