



**EUROPEAN COMMITTEE OF SOCIAL RIGHTS  
COMITE EUROPEEN DES DROITS SOCIAUX**

January 2013

**REPORT  
ON THE NON-ACCEPTED PROVISIONS  
OF THE EUROPEAN SOCIAL CHARTER**

**ALBANIA**

Meeting of 5<sup>th</sup> June 2012 in Tirana



**TABLE OF CONTENTS**

I. SUMMARY ..... 3  
II. EXAMINATION OF THE NON-ACCEPTED PROVISIONS.....5

Appendix 1: Albania and the European Social Charter

Appendix 2 : Programme of the meeting

Appendix 3 : Declaration of the Committee of Ministers on the 50<sup>th</sup> anniversary of the European Social Charter

## I. SUMMARY

The meeting with the Albanian authorities took place within the framework of the procedure adopted by the Ministers' Deputies in December 2002 concerning the provisions not accepted by the States Parties (Article 22 of the 1961 Charter). The Deputies decided that "states having ratified the Revised European Social Charter should report on the non-accepted provisions every five years after the date of ratification" and "invited the European Committee of Social Rights to arrange the practical presentation and examination of reports with the states concerned".

In accordance with this decision, five years after ratification of the Charter (and every five years thereafter), the European Committee of Social Rights ("the Committee") reviews non-accepted provisions with the authorities of the state concerned with a view to securing a higher level of acceptance. Experience has shown that governments tend to overlook that selective acceptance of Charter provisions is intended to be transitory. The aim of the new procedure is therefore to require them to review the national situation at regular intervals and encourage them to accept more provisions.

Albania ratified the Charter on 14 November 2002 and accepted 64 of the Charter's 98 paragraphs. Albania, to this date, has not ratified yet: Article 9; Article 10§§1, 2, 3, 4, 5; Article 12§§1, 2, 3, 4; Article 13§§1, 2, 3, 4; Article 14§§1, 2; Article 15§§ 1, 2, 3; Article 16; Article 17§§1, 2; Article 18§§ 1, 2, 3, 4; Article 23; Article 27§§1, 2, 3; Article 30 and Article 31§§ 1, 2, 3.

The meeting on the non-accepted provisions of the Charter was organised in Tirana on 5<sup>th</sup> June 2012.

The meeting focused on the actual legislative situation in Albania, the situation in practice, and the possible acceptance of some or all above-mentioned articles. Representatives of the following Albanian state institutions attended the meeting: Ministry of Labour, Social Affairs and Equal Opportunities, Ministry of Transport and Telecommunications, National Children Rights Agency, Social Insurances Institute and Ministry of Culture.

Albania also has not accepted the Additional Protocol of 1995 to the European Social Charter providing for a system of collective complaints and a discussion took place on this issue, too. The representatives of the Government were of the opinion that the Additional Protocol to the European Social Charter providing for a system of collective complaints could be accepted by Albania.

The European Committee of Social Rights proceeded to the examination of the situation on the basis of the information provided by the government during the

meeting and in written and herewith delivers its assessment of the situation in relation to the provisions of the Charter not accepted by Albania:

**Provisions which could be accepted by Albania:**

Article 9 – Right to vocational guidance

Article 10§§1, 2, 3, 4, 5– Right to vocational training

Article 12§§2, 3 – Right to social security

Article 13§§2, 3, 4 – Right to social assistance

Article 14§§1, 2 – Right to benefit from social welfare services

Article 17§§1, 2 – Right of children and young persons to social, legal and economic protection

Article 18§§1, 2, 3, 4 – Right to engage in a gainful occupation in the territory of other parties

Article 27§§1, 2, 3 – Right of workers with family responsibilities to equal opportunities and equal treatment

Article 31§1 – Right to housing

**Provisions with which Albania does not seem to comply:**

Article 12§§1, 4 – Right to social security

Article 13§§1 – Right to social assistance

Article 15§§1, 2, 3 – Right of persons with disabilities to independence, social integration and participation in the life of the community

Article 16 – Right of the family to social, legal and economic protection

Article 23 – Right of elderly persons to social protection

Article 30 – Right to protection against poverty and social exclusion

Article 31§2, 3 – Right to housing

The next examination of the provisions not accepted by Albania will take place in 2017.

In view of the conclusions of this report, the Committee wishes to encourage Albania to consider accepting additional provisions of the Charter as soon as possible so as to consolidate the paramount role of the Charter in guaranteeing and promoting social rights. The Committee uses the opportunity of this Report to draw the attention of States Parties to the Declaration of the Committee of Ministers on the 50th anniversary of the European Social Charter (Appendix 3).

## EXAMINATION OF THE NON-ACCEPTED PROVISIONS

The description of the situation in Albania set out for the different provisions below reproduces the written information provided by the Albanian Government with only minor editorial changes and a summary of the information provided during the meeting held in Tirana for this purpose.

### Article 9

#### *Situation in Albania:*

The rights and obligations laid out in Article 9 of the Social Charter are anchored in the existing provisions of the Albanian legislation, namely: Article 6, Law 7995, of 20.09.1995, "On employment promotion", amended, which lays out as follows:

"Active labor market policies include:

- a) Employment services
- b) Job creation programmes
- c) Vocational training programmes"

Article 6/1 "Employment services" lays out the following:

"Employment services include the following:

- a) Information on vacancy announcements;
- b) Job placement;
- c) Job counselling, vocational counselling and job orientation"

Article 7/1 on job counselling, vocational counselling and job orientation, lays out the following:

- "1. Counseling and orientation for vocational and employment purposes aims at helping jobseekers to choose and to specialize in a job that is related to their individual capacities and that is in demand in the labor market.
2. The National Employment Service provides free of charge job and vocational counselling for all jobseekers throughout the country."

With regard to the above provisions, the Albanian authorities maintain that Albania can accept Article 9 of the Revised European Social Charter.

*Opinion of the Committee:*

Article 9 imposes on states to set up and operate a service that helps all persons, free of charge, to solve their problems relating to vocational guidance.<sup>1</sup> The right to vocational guidance must be guaranteed<sup>2</sup>:

1. within the school system (information on training and access to training);
2. within the labour market (information on vocational training and retraining, career planning, etc).

The indicators taken into consideration to assess vocational guidance are : objectives, organisation, operation, overall expenditure, number of staff and number of beneficiaries. Vocational guidance shall address in particular school-leavers, jobseekers and unemployed persons. Vocational guidance must be provided:

- free of charge;
- by qualified (counsellors, psychologist and teachers) and sufficient staff;
- to a significant number of persons.

It shall also be adequately financed by the State: the information collected and the means used to disseminate them should allow as many people as possible to be reached.

Equal treatment with respect to vocational guidance must be guaranteed to everyone, including non-nationals. According to the Appendix to the Charter, equality of treatment shall be provided to nationals of other Parties lawfully resident or regularly working on the territory of the Party concerned. This implies that no length of residence is required from students and trainees residing in any capacity, or having authority to reside in reason of their ties with persons lawfully residing, on the territory of the Party concerned before starting training. This does not apply to students and trainees who, without having the above-mentioned ties, entered the territory with the sole purpose of attending training. To this purpose, length of residence requirements or employment requirements and/or the application of the reciprocity clause are contrary to the provisions of the Charter.<sup>3</sup>

The Committee underlines that vocational guidance must be provided within the education system as well as in the labour market. Albania seems to be in a position to accept Article 9, provided that an efficient system of vocational guidance in secondary and higher education is in place.

Albania seems to meet the requirements as to the regulatory framework governing vocational guidance services and the existence of such services in education system

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<sup>1</sup> Conclusions I, Statement of Interpretation on Article 9, p. 53.

<sup>2</sup> Conclusions XIV-2, Statement of Interpretation on Article 9, p. 53-61.

<sup>3</sup> Conclusions XVI-2, Poland, pp. 632-633.

and labour market although exact information on the expenditure, staff and number of beneficiaries is not entirely available.

Albania is encouraged to accept this provision.



## **Article 10§§1-5**

### *Situation in Albania:*

The existing provisions of the Albanian legislation address the rights and obligations provided under this article of the Social Charter, more precisely: Article 5 of the Law On Employment Promotion stipulates:

1. The responsible ministry for state employment policies, among others:  
Prepares and supports vocational training programs

Article 15 on the job counselling and orientation in vocational education and development of Law 8872, date 29.03.2002 "On vocational education and training in the Republic of Albania" (henceforward VTL), amended, stipulates: "VET career counseling/guidance and orientation aims at helping all citizens in choosing the education, job/profession, training, retraining and vocational re-qualification most suitable for their interests, mentally and physical ability." Pursuant to this law, the Minister of Labor has issued Guideline No. 2222 dated 31.10.2002 "On career counseling, guidance and orientation."

The National Employment Service implements this guideline through its Employment Offices, whose staff deals directly with the provision of career counselling for all those interested. Special attention is paid to special groups, under which the following are specifically address by the Law "On Employment Promotion":

Jobseekers such as mothers with many children, persons over 50 years old, persons younger than 18 years old, long-term unemployed, persons living in families under the poverty level, trafficking victims, persons enrolled in the financial aid programs, persons who loose their jobs following to the restructuring of enterprises and institutions, and to privatization, young unemployed mothers, divorced women with social problems, recently returned emigrants with economic problems, recently graduated students with no labor market orientation, former prison inmates, people with disabilities, Roma, orphans who enjoy this status.

Employment promotion programs are implemented by the employment offices. These programs support employers to create and retain jobs, and to provide job placement to the candidates provided by the employment offices.

The support from the state is provided through subventions, and through the compensation of a certain percentage of the costs for the obligatory social insurance. At presence, following employment promotion programs approved through a Council of Minister's Decree, related to vocational training, are being implemented:

The programe established pursuant to Council of Ministers' Decision No. 47, dated

16.01.2008 “Employment promotion programme for unemployed jobseekers through vocational training”, based on articles 4, 8, 11 and 12 of Law 7995 dated 20.9.1995, “On Employment Promotion”, amended.

The programme established pursuant to the of Ministers’ Decision No. 873, dated 27.12.2006 “On funding measures and on criteria and procedures for the provision of professional internships for unemployed jobseekers holding an Albanian or foreign university degree” aims at helping young people to establish a professional experience so as to be able to find a reliable job.

Articles 11,12, and 13 of the law on employment promotion lay out the policies of the ministry in the field of professional vocation, more concretely: vocational formation that is provided through practical and theoretical courses and through direct participation in special work processes. Therefore the focus on vocational training has increased in the public and in the private sector.

VTL guarantees the right for life-long vocational training, the possibility to attend induction vocational trainings, and the right to obtain vocational knowledge, by providing for equal opportunities for all.

The Government supports the creation of vocational training capabilities, both in quantitative and qualitative terms, through the development of the public vocational training system. In addition to the public vocational training centres, private vocational training centres have been licenced from the National Licensing Centre.

With regard to the above provisions, the Albanian authorities maintain that this article can be accepted by Albania.

*Opinion of the Committee:*

Article 10§1

The notion of vocational training of Article 10§1 covers: initial training - i.e. general and vocational secondary education - university and non-university higher education, and vocational training organised by other public or private actors, including continuing training – which is dealt with under paragraph 3 of the Charter (see *infra*). University and nonuniversity higher education are considered to be vocational training as far as they provide students with the knowledge and skills necessary to exercise a profession.<sup>4</sup> The right to vocational training must be guaranteed to everyone.<sup>5</sup> States must provide vocational training by<sup>6</sup>:

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<sup>4</sup> Conclusions 2003, France, p. 131.

<sup>5</sup> Conclusions I, p. 55.

<sup>6</sup> Conclusions 2003, France, p. 131.

- ensuring general and vocational secondary education, university and nonuniversity higher education; and other forms of vocational training;
- building bridges between secondary vocational education and university and non-university higher education;
- introducing mechanisms for the recognition/validation of knowledge and experience acquired in the context of training/working activity in order to achieve a qualification or to gain access to general, technical and university higher education;
- taking measures to make general secondary education and general higher education qualifications relevant from the perspective of professional integration in the job market;
- introducing mechanisms for the recognition of qualifications awarded by continuing vocational education and training.

Facilities other than financial assistance to students (which is dealt with under Article 10§4) shall be granted to ease access to technical or university higher education based solely on individual aptitude.<sup>7</sup> This obligation<sup>8</sup> can be achieved namely by:

- avoiding that registration fees or other educational costs create financial obstacles for some candidates;
- setting up educational structures which facilitate the recognition of knowledge and experience, as well as the possibility of transferring from one type or level of education to another.

The main indicators<sup>9</sup> of compliance include the existence of the education and training system, its total capacity (in particular, the ratio between training places and candidates), the total spending on education and training as a percentage of the GDP; the completion rate of young people enrolled in vocational training courses and of students enrolled in higher education; the employment rate of people who hold a higher-education qualification and the waiting-time for these people to get a first qualified job.

Equal treatment with respect to access to vocational training must be guaranteed to non-nationals.<sup>10</sup> According to the Appendix to the Charter, equality of treatment shall be provided to nationals of other Parties lawfully resident or regularly working on the territory of the Party concerned. This implies that no length of residence is required from students and trainees residing in any capacity, or having authority to reside in reason of their ties with persons lawfully residing, on the territory of the Party concerned before starting training. This does not apply to students and trainees who, without having the above-mentioned ties, entered the territory with the sole purpose of attending training. To this purpose, length of residence requirements or employment requirements and/or the application of the reciprocity clause are contrary to the provisions of the Charter.<sup>11</sup>

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<sup>7</sup> Conclusions I, p. 55.

<sup>8</sup> Conclusions 2003, France, p. 132.

<sup>9</sup> Conclusions XIV-2, Statement of Interpretation on Article 10§1, p. 60 and Conclusions 2003.

<sup>10</sup> Conclusions XIV-2, Statement of Interpretation on Article 10§1, p. 62.

<sup>11</sup> Conclusions 2003, Slovenia, p. 473.

## Article 10§2

According to Article 10§2, young people have the right to access to apprenticeship and other training arrangements. Apprenticeship means training based on a contract between the young person and the employer, whereas other training arrangements can be based on such a contract, but also be school-based vocational training.<sup>12</sup> They both must combine theoretical and practical training and close ties must be maintained between training establishments and the working world.<sup>13</sup> Apprenticeship is assessed on the basis of the following elements: length of the apprenticeship and division of time between practical and theoretical learning; selection of apprentices; selection and training of trainers; remuneration of apprentices; termination of the apprenticeship contract.<sup>14</sup>

The main indicators of compliance are the existence of apprenticeship and other training arrangements for young people, the number of people enrolled, the total spending, both public and private, on these types of training and the availability of places for all those seeking them.<sup>15</sup>

Equal treatment with respect to access to apprenticeship and other training arrangements must be guaranteed to non-nationals on the basis of the conditions mentioned under Article 10§1.<sup>16</sup>

## Article 10§3

The right to continuing vocational training must be guaranteed to employed and unemployed persons, including young unemployed people. Self-employed persons are also covered by this provision. Article 10§3 takes into consideration only those of the activation measures for unemployed people that strictly concern training, while Article 1§1 deals with general activation measures for unemployed people. Specific measures for long-term unemployed people are dealt with under Article 10§4.<sup>17</sup> The notion of continuing vocational training includes adult education.<sup>18</sup>

For both employed and unemployed persons, the main indicators of compliance with this provision are the types of continuing vocational training and education available on the labour market, training measures for certain groups, such as women, the overall participation rate of persons in training and the gender balance, the

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<sup>12</sup> Conclusions XIV-2, Statement of Interpretation on Article 10§2, pp. 60-61 and Conclusions 2003, Sweden, p. 589.

<sup>13</sup> Conclusions XIV-2, Statement of Interpretation on Article 10§2, pp. 60-61.

<sup>14</sup> Conclusions XVI-2, Malta, p. 498.

<sup>15</sup> Conclusions XIV-2, Statement of Interpretation on Article 10§2, p. 61.

<sup>16</sup> Conclusions XIV-2, Statement of Interpretation on Article 10§2, p. 62 and Conclusions 2003, Slovenia, p. 473.

<sup>17</sup> Conclusions 2003, Italy, p. 272.

<sup>18</sup> Conclusions XIV-2, Statement of Interpretation on Article 10§3, p. 61.

percentage of employees participating in continuing vocational training, and the total expenditure.<sup>19</sup> As regards employed persons, the existence of preventive measures against the deskilling of still active workers at risk of becoming unemployed as a consequence of technological and/or economic development is also taken into consideration.<sup>20</sup> As regards unemployed people, the activation rate – i.e. the ratio between the annual average number of previously unemployed participants in active measures divided by the number of registered unemployed persons and participants in active measures - is used to assess the impact of the States' policies.

In addition, the following aspects are taken into account:<sup>21</sup>

- the existence of legislation on individual leave for training and its characteristics, in particular the length, the remuneration, and the initiative to take it;
- the sharing of the burden of the cost of vocational training among public bodies (state or other collective bodies), unemployment insurance systems, enterprises, and households as regards continuing training.

Equal treatment with respect to access to continuing vocational training must be guaranteed to non-nationals<sup>22</sup> on the basis of the conditions mentioned under paragraph 1.<sup>23</sup>

#### Article 10§4

In accordance with Article 10§4, States must fight long-term unemployment through retraining and reintegration measures. A person who has been without work for 12 months or more is long-term unemployed.<sup>24</sup> The main indicators of compliance with this provision are the types of training and retraining measures available on the labour market, the number of persons in this type of training, the special attention given to young long-term unemployed, and the impact of the measures on reducing long-term unemployment. Equal treatment with respect to access to training and retraining for long-term unemployed persons must be guaranteed to non-nationals on the basis of the conditions mentioned under Article 10§1.

#### Article 10§5

States must ensure that vocational training, as defined in Article 10§1, is provided free of charge or that fees are reduced. Fees and contributions, however, shall not

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<sup>19</sup> Conclusions XIV-2, Statement of Interpretation on Article 10§3, p. 61.

<sup>20</sup> Conclusions 2003, Italy, p. 273.

<sup>21</sup> Conclusions 2003, Slovenia, pp. 477-478.

<sup>22</sup> Conclusions IV, Statement of Interpretation on Article 10§3, p. xv.

<sup>23</sup> Conclusions XVI-2, Addendum, Ireland, p. 39.

<sup>24</sup> Conclusions 2003, Italy, p. 274.

apply differently to non-nationals and States are under the obligation to guarantee equal treatment on the basis of the conditions mentioned under Article 10§1<sup>25</sup>.

Access to vocational training also covers the granting of financial assistance, whose importance is so great that the very existence of the right to vocational training may depend on it.<sup>26</sup> All issues concerning financial assistance for vocational training up to higher education, including allowances for training programmes in the context of the labour market policy,<sup>27</sup> are dealt with under paragraph 4.<sup>28</sup> States must provide financial assistance either universally, or subject to a means-test, or awarded on the basis of the merit. In any event, assistance should at least be available for those in need<sup>29</sup> and shall be adequate.<sup>30</sup> It may consist of scholarships or loans at preferential interest rates. The number of beneficiaries and the amount of financial assistance are also taken into consideration for assessing compliance with this provision.<sup>31</sup> Equal treatment with respect to financial assistance must be guaranteed to non-nationals on the basis of the conditions mentioned under Article 10§1.<sup>32</sup>

The time spent on supplementary training at the request of the employer must be included in the normal working-hours. Supplementary training means any kind of training that may be helpful in connection with the current occupation of the workers and aimed at increasing their skills. It does not imply any previous training. The term “during employment” means that the worker shall be currently under a working relationship with the employer requiring the training.

States must evaluate their vocational training programmes for young workers, including the apprenticeships. In particular, the participation of employers’ and workers’ organisations is required in the supervision process.<sup>33</sup>

In light of the above, the Committee considers that the legal framework supports a system of vocational training. Albania could accept Article 10§§1-5 provided that the situation in practice is in line with the legislative framework.

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<sup>25</sup> Conclusions XVI-2, United Kingdom, p. 941.

<sup>26</sup> Conclusions VIII, Statement of Interpretation on Article 10§5, p. 136.

<sup>27</sup> Conclusions XVI-2, Slovak Republic, p. 773.

<sup>28</sup> Conclusions XIV-2, Statement of Interpretation on Article 10§5, p. 62.

<sup>29</sup> Conclusions XIII-1, Turkey, p. 242.

<sup>30</sup> Conclusion XVI-2, Slovak Republic, p. 772.

<sup>31</sup> Conclusions XIV-2, Ireland, p. 406.

<sup>32</sup> Conclusions 2003, Slovenia, p. 483.

<sup>33</sup> Conclusions XIV-2, United Kingdom, p. 784.

## **Article 12§§1-4**

### *Situation in Albania:*

On Article 12 “Right to social security”, Albania has fulfilled the conditions laid out in paragraph 3 of this Article, regarding the gradual improvement of the social security system, compared to the previous reporting period. Positive developments concerning the reform of the social security scheme and the improvement of the performance of the services of the Institute of Social Services, enable Albania to accept paragraph 3.

The right to social security as sanctioned in the Revised Social Charter should be considered in relation to the European Code of Social Security and the ILO Convention 102 “On the minimal social security standards”.

The compensation paid in case of sickness amount to 70% of the daily average income calculated on the baseline income of the last calendar year, if the person has been insured for up to 10 years, and 80% if he or she has been insured for over 10 years.

The compensation provided by the unemployment aid amounts to 40% of the minimum wage, yet it does not fulfill the condition according to which it ought to be calculated based on the previous income of the insured person.

With regard to the minimum retirement pensions, the ratio of the payments amounts to approximately 75% of the average net wage. This indicator points to 45% of the total number in the case of average retirement pensions, whilst the indicator for high retirement pensions points to 35%.

Benefits from disability pensions amount up to 80% of the average net wage.

As a conclusion, the requirement of the ILO Convention 102 and of Recommendation 67 providing that the benefits should amount at least up to 50% of the minimum wage of an unspecialized male employee, is fulfilled.

In the framework of last year’s SSC&SSR reform program implemented in the countries of South-Eastern Europe, upon our request, an assessment study of the Albanian legislation on the social security was made, which focused, among on its compatibility with the European Code of Social Security. The author of the assessment study recommended to Albania to consider ratifying the European Code of Social Security, also paragraphs 2 and 3 of Article 12 of the Social Charter, as it has already accepted the social security standards of the ILO Convention.

With regard to Article 12, paragraph 4, laying out the rights of the citizens moving within the territories of the state parties to benefit from social insurance in an equal manner to each-

other, it should be noted that Albania has a bilateral agreement in the field of social insurance with Turkey. It is expected that similar agreements will be concluded with Hungary, Macedonia and Belgium by the end of this year.

Despite the achievements made to date in this regard, the Albanian authorities wonder whether this is sufficient to accept paragraph 4.

*Opinion of the Committee:*

Article 12§1

Article 12§1 guarantees the right to social security to workers and their dependents including the self-employed.<sup>34</sup> States must ensure this right through the existence of a social security system established by law and functioning in practice. Each country is free to define its own social security system. The European Social Charter neither imposes a common model, nor seeks to harmonise social security legislation but rather to lay down minimum common standards.

Social security, which includes universal schemes as well as professional ones, includes contributory, non-contributory and combined allowances related to certain risks. These are benefits granted in the event of risks which arise but they are not intended to compensate for a potential state of need which could result from the risk itself.<sup>35</sup>

Material and personal scope

A social security system exists within the meaning of Article 12§1 when it complies with the following criteria:<sup>36</sup>

- Firstly, the social security system should cover the traditional risks and therefore provide the following benefits: medical care, sickness benefit, unemployment benefit, old age benefit, employment injury benefit, family benefit, and maternity benefit.<sup>37</sup>
- Secondly, it must be collectively financed, which means funded by contributions of employers and employees and/or by the state's budget.
- Thirdly, it must cover a significant percentage of the population in respect of health insurance and family benefits, and the system must cover a significant percentage of the active population as regards sickness and maternity benefits, unemployment benefits, pensions, and work accidents or occupational diseases benefits.<sup>38</sup> The system must cover a significant percentage of the active population. When the

<sup>34</sup> Conclusions XIV-1, Ireland, p. 424.

<sup>35</sup> Conclusions XIII-4, statement of interpretation on Article 12, p. 36.

<sup>36</sup> Conclusions XVI-1, Statement of Interpretation on Article 12, p. 10.

<sup>37</sup> Conclusions 2006, Bulgaria, p. 116.

<sup>38</sup> Conclusions 2006, Bulgaria, p. 116.



system is financed by taxation, its coverage in terms of persons protected should rest on the principle of non-discrimination, without prejudice to the conditions for entitlement (means-test, etc.).<sup>39</sup>

Equal treatment on the ground of gender with respect to social security is dealt with under Article 20. No discrimination on the basis of sex should occur as regards the material scope of the social security system, access to the system, the calculation and the length of benefits.

### Social security benefits and their adequacy

A social security system must also guarantee an effective right to social security with respect to the benefits provided under each branch.<sup>40</sup> Under Article 12§1, when they are income-replacement benefits, the level of benefits should be such as to represent a reasonable proportion of the previous income and should never fall below the poverty threshold defined as 50% of median equivalised income, as calculated on the basis of the Eurostat at-risk-of-poverty threshold value; otherwise the level is inadequate<sup>41</sup>.

However, in the event that the level of the benefit in question falls between 40% and 50% of median equivalised income, its combination with other benefits, including those of a social assistance nature is taken into account and is considered to be in conformity with Article 12§1 where the level of the combined benefits reaches 50%.<sup>42</sup> When the level of the benefit originally falls below 40% of the median equivalised income, it is manifestly inadequate, and therefore its completion with other benefits cannot bring the situation into conformity with Article 12§1.<sup>43</sup> The inadequacy of a benefit in a single branch is sufficient to bring the situation into non-conformity.<sup>44</sup>

Unemployment benefits must also meet specific conditions to be in conformity with Article 12§1: their payment must be for a reasonable duration<sup>45</sup> and there must be a reasonable initial period during which an unemployed person may refuse a job or a training offer not matching his previous skills without losing his unemployment benefits.<sup>46</sup> The threat of suspension or withdrawal of their unemployment benefits during this initial period may in certain circumstances infringe their right to earn a living in an occupation freely entered upon (Article 1§2).

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<sup>39</sup> Conclusions XVI-1, Statement of Interpretation on Article 12, p. 10.

<sup>40</sup> Conclusions XIII-4, Statement of Interpretation on Article 12, p. 36.

<sup>41</sup> Conclusions 2006, Bulgaria, p. 118.

<sup>42</sup> Conclusions 2006, Estonia, p. 107.

<sup>43</sup> Conclusions XVIII-1, Austria, p. 20.

<sup>44</sup> Conclusions 2006, Portugal, p. 703.

<sup>45</sup> Conclusions XVIII-1, Malta, p. 215.

<sup>46</sup> Conclusions XVIII-1, Germany, p. 131.

Under Article 12§1, the existence of maternity and family branches is taken into consideration, but the scope and level of the benefits are assessed under, respectively, Articles 8 and 16.<sup>47</sup>

#### Article 12§2

Article 12§2 obliges states to establish and maintain a social security system which is least equal to that required for ratification of the European Code of Social Security. The European Code of Social Security requires acceptance of a higher number of parts than ILO Convention No 102; six of the nine parts must be accepted although certain branches count for more than one part medical care counts as two parts, and old age counts as three. Each contingency sets minimum levels of personal coverage and minimum levels of benefits. Where a state has ratified the European Code of Social Security the Committee bases its conclusions under this paragraph on the Committee of Minister's Resolutions under the Code (which are in turn based on the assessment of the ILO Committee of Experts and the Committee of Experts on Social Security (CS-SS)). Failure to comply with the European Code of Social Security will lead to a conclusion of non-conformity with Article 12§2, where the state is not in compliance with at least the minimum parts for ratification.<sup>48</sup>

When the State concerned has not ratified the European Code of Social Security, the Committee makes its own assessment of the social security system in order to decide on the conformity with Article 12§2.<sup>49</sup>

#### Article 12§3

Article 12§3 requires states to improve their social security system, the expansion of schemes, protection against new risks or increase of benefits, are examples improvement.<sup>50</sup>

A restrictive evolution in the social security system is not automatically in violation of Article 12§3. The Committee's assessment of the situation is based on the following criteria.<sup>51</sup>

- the nature of the changes (field of application, conditions for granting allowances, amounts of allowance, etc.);
- the reasons given for the changes and the framework of social and economic policy in which they arise;
- the extent of the changes introduced (categories and numbers of people concerned, levels of allowances before and after alteration);

<sup>47</sup> Conclusions 2006, Bulgaria, p. 119

<sup>48</sup> Conclusions 2006, Italy, p.448.

<sup>49</sup> Conclusions XIV-1, Finland, p. 223.

<sup>50</sup> Conclusions XVI-1, Statement of Interpretation on Article 12, p. 11.

<sup>51</sup> Conclusions XVI-1, Statement of Interpretation on Article 12, p. 11.

- the necessity of the reform;
- the existence of measures of social assistance for those who find themselves in a situation of need as a result of the changes made (this information can be submitted under Article 13);
- the results obtained by such changes.

Measures taken in order to consolidate public finances may be considered as a necessary means to ensure the maintenance and sustainability of the social security system. However, any modifications should not undermine the effective social protection of all members of society against social and economic risks and should not transform the social security system into a basic social assistance system.<sup>52</sup>

Therefore any changes to a social security system must nonetheless ensure the maintenance of a basic compulsory social security system which is sufficiently extensive.<sup>53</sup>

#### Article 12§4

In defining the personal scope of Article 12§4, reference must be made to paragraph 1 of the Appendix to the Charter, which reads “Without prejudice to Article 12§4, the persons covered by Articles 1 to 17 include foreigners only insofar as they are nationals of other Contracting Parties lawfully resident or working regularly within the territory of the Contracting Party concerned”. It follows from the Appendix to the Charter that Article 12§4 applies to nationals of other States Parties who no longer reside on the territory concerned but who did reside or worked regularly there in the past and acquired social security rights. The scope of Article 12§4 extends to refugees and stateless persons. Self employed workers<sup>54</sup> are also covered.<sup>55</sup> The principle of reciprocity does not apply to Article 12§4.<sup>56</sup>

#### Material scope of Article 12§4a

In order to ensure the right to social security of persons moving between States the following principles must be guaranteed with respect to all existing branches of the social security system:

##### Right to equal treatment

The guarantee of equal treatment within the meaning of Article 12§4 requires states to remove all forms of discrimination from their social security legislation against foreigners in so far as they are nationals of other States Parties. Both direct and

<sup>52</sup> Conclusions XIV-1, Statement of Interpretation on Article 12, p. 47.

<sup>53</sup> Conclusions XIV-1, Statement of Interpretation on Article 12, p. 48.

<sup>54</sup> Conclusions XIV-1, Turkey, p. 769.

<sup>55</sup> Conclusions XIV-1, Turkey, p. 768.

<sup>56</sup> Conclusions XIII-4, Statement of Interpretation on Article 12, p. 43.

indirect discrimination are covered. National legislation cannot reserve a social security benefit to nationals only, or impose extra or more restrictive conditions on foreigners, neither may national legislation stipulate eligibility criteria for social security benefits which, although they apply without reference to nationality, are harder for foreigners to comply with and therefore affect them to a greater degree.<sup>57</sup> However, legislation may require a completion of a period of residence for non-contributory benefits. In this respect, Article 12§4 requires that any period of residence is reasonable.<sup>58 59</sup>

As regards child benefit, a condition that the child concerned resides on the territory of the paying state is compatible with Article 12§4.<sup>60</sup> This means that any child resident in a defined country is entitled to the payment of family benefits on an equal footing with nationals of the country concerned. Therefore, whoever is the beneficiary under the social security system, i.e. whether it is the worker or the child, state Parties are under the obligation to secure through unilateral measures the actual payment of family benefits to all children residing on their territory. However, since not all countries apply such a system, states applying the 'child residence requirement' are under the obligation, in order to secure equal treatment within the meaning of Article 12§4, to conclude within a reasonable period of time bilateral or multilateral agreements with those states which apply a different entitlement principle.<sup>61</sup>

Equality of treatment does not necessarily mean that family allowances should be paid at the same amount when the children for whom it is granted are not residents of the same country as the recipient. The level of benefit may in this case be reduced where the cost of living in the child's country of residence is significantly lower, but the reduction must be proportional to the differences of the cost of living in the countries concerned.<sup>62 63</sup>

#### Right to retention of accrued rights

Invalidity benefit, old age benefit, survivor's benefit and occupational accident or disease benefit acquired under the legislation of one state according to the eligibility criteria laid down under national legislation are maintained irrespective of whether the beneficiary moves between the territories.<sup>64</sup> Due to the particular nature of unemployment benefit, which is a short-term benefit closely linked to trends in the labour market, Article 12§4 does not require it to be exported.<sup>65</sup>

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<sup>57</sup> Conclusions XIII-4, Statement of Interpretation on Article 12, p. 43.

<sup>58</sup> Conclusions XIII-4, Statement of Interpretation on Article 12, p. 44.

<sup>59</sup> Conclusions 2004, Lithuania, p. 370.

<sup>60</sup> Conclusions 2006, Statement of Interpretation on Article 12 §4, p. 13.

<sup>61</sup> Conclusions 2006, Statement of Interpretation on Article 12§4, see for example Cyprus p. 160.

<sup>62</sup> Conclusions XIII-4, Statement of Interpretation on Article 12, p. 44.

<sup>63</sup> Conclusions XIV-1, Germany, p. 314.

<sup>64</sup> Conclusions XIV-1, Finland, p. 230.

<sup>65</sup> Conclusions XIV-1, Norway, p. 630.

With respect to the retention of benefits (exportability), the obligations entered into by States Parties must be fulfilled irrespective of any other multilateral social security agreement that might be applicable.<sup>66</sup> In order to ensure the exportability of benefits, States may choose between bilateral agreements or any other means<sup>67 68</sup> such as unilateral, legislative or administrative measures.

Material scope of Article 12§4b

#### Right to maintenance of accruing rights

There should be no disadvantage for a person who changes their country of employment where they have not completed the period of employment or insurance necessary under national legislation to confer entitlement and determine the amount of certain benefits. This requires, where necessary, the aggregation of employment or insurance periods completed in another territory and, in the case of long-term benefits, a pro-rata approach to the conferral of entitlement, the calculation and payment of benefit.<sup>69</sup> States may choose between the following means in order to ensure maintenance of accruing rights: multilateral convention, bilateral agreement or, unilateral, legislative or administrative measures.<sup>70</sup> States that have ratified the European Convention on Social Security are presumed to have made sufficient efforts to guarantee the retention of accruing rights.<sup>71</sup>

In light of the above, the Committee considers that Albania could accept Article 12§§2 and 3. The Committee considers that the requirements under Article 12§§1 and 4 may not be met in practice. Under Article 12§1, the existence of a social security system established by law and functioning in practice is in place but as to material and personal scope, the situation in law and practice may not adequately meet the standards required. Under Article 12§4, Albania has already concluded a number of agreements with some of the member states parties to the Charter but there is still a large number of member parties with whom no agreements are in place.

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<sup>66</sup> Conclusions XVI-1, Belgium, p. 74.

<sup>67</sup> Conclusions XIII-4, Statement of Interpretation on Article 12, p. 54.

<sup>68</sup> Conclusions XIII-2, Norway, p.122.

<sup>69</sup> Conclusions XIII-4, Statement of Interpretation on Article 12, p. 45.

<sup>70</sup> Conclusions XIV-1, Portugal, p. 669.

<sup>71</sup> Conclusions 2006, Italy.

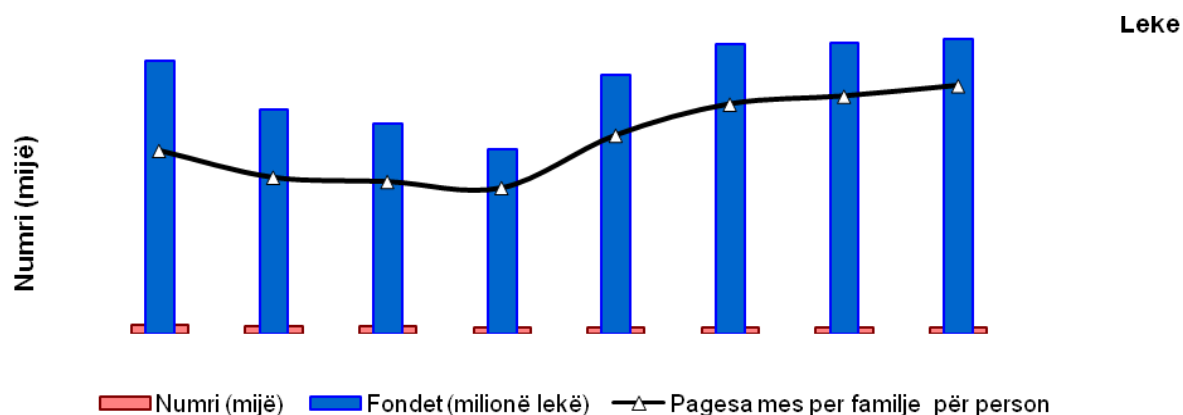
## Article 13§§1-4

*Situation in Albania:*

Public funding (central and local government) for social assistance programs in Albania

### Chronological overview – social assistance scheme: Economic Assistance, Albania

Description	2004	2005	2006	2007	2008	2009	2010	2011
Persons (thousand)	124	119	113	97	94	98	97	99
Funds (million Albanian LEK)	3,967	3,257	3,048	2,674	3,765	4,200	4,215	4,279
Average payment family/person	2,662	2,275	2,215	2,124	2,884	3,334	3,448	3,600



### Source: Statistical Bulletin, MoLSAEO

The social security system entails the social security scheme, the employment and vocational training scheme, and the social services and social assistance scheme. The social security scheme and the employment scheme are based on the contributive principle. It protects all economically active persons able to contribute in the scheme.

The persons not able to benefit from the social security scheme are supported by the social services and social assistance scheme that consists of three basic programs: i) economic assistance ii) disability allowance iii) social services.

The social services and social assistance scheme are based on Law No. 9355 dated 10.03.2005 “On social assistance and services”. In conjunction to the relevant sectorial strategies, this law aims at reducing poverty and at providing services to the vulnerable groups.

- I. Economic Assistance
- II.

The economic assistance program provides direct cash benefits to those families with no or insufficient income. It is calculated on the basis of the social and economical evaluation of the living standards of the families, and it is not time-bound. Albania's economic assistance program is wholly funded by the state budget. The categories of beneficiaries from the economic assistance program are the following:

1. Families in need.
2. Orphans who do not live in residential centers.
3. Parents with more than 2 children born at the same time, living in families in need.
4. Victims of trafficking, upon their separation from the social care institutions until they are employed.
5. Victims of domestic violence, during the validity period of their protection order or their immediate protection order. At present some 98 thousand families are recipients of the economic aid, out of 124 thousand families of the year 2004. The decrease in the number of recipients came as a result of the tightening of the controls over the scheme. On the other hand, the separation of the ineligible families from the scheme was accompanied by the increase of the average cash disbursements for the remaining families entitled to the economic aid benefit.

There exists a double responsibility for the distribution of the economic assistance scheme. The scheme is currently administered at the central and at the local level. The Ministry of Labor, Social Affairs and Equal Opportunities develops the national social policies and drafts the legislation relevant thereto. It monitors their implementation, and drafts the national budget for social services, economic aid and disability allowances. It delegates the funds to the local government units, and licenses the social service providers. In addition, it drafts the social service standards and criteria.

The State Social Service is a public institution under the line authority of the Ministry of Labor, Social Affairs and Equal Opportunities. It is in charge of assessing poverty levels in the country. It programs the funds for economic aid, disability allowances and social services. It monitors the utilization of the funds and the implementation of the quality standards of social services. It is responsible for the implementation of the legislation and for the provision of the relevant vocational training.

The local government units are responsible for the following tasks in the framework of the social security system: they identify the families and individuals in need of social aid, disability allowances and social services and prepare the requests for funding:

they establish new social services inline with community needs and administer the existing residential social service institutions and daily service centers. Local government units select through public procurement procedures regularly licensed social service providers able to provide the social services requested. They are in charge for the distribution of the direct cash benefits to the recipients of economic aid and disability allowances. They collect statistical evidence and report it to the central institutions.

At present, the system for the identification of the families in need is being improved through the establishment of better eligibility criteria, through the establishment of more precise guidelines for the assessment of the income of the families by figuring in the income from their businesses, including herein their income from farming and agriculture, so as to correctly consolidate the actual revenues of the claimants for the purpose of working out a more efficient distribution of cash benefits and a better allocation of resources to the local government units.

## II. Disability Allowance

The disability allowance is a monthly cash disbursement for people with disabilities defined as such on the basis of an assessment made a by special medico-legal commission. The disability allowance is granted so as to enable the rehabilitation of the people with physical and mental disabilities and to provide for their independent living.

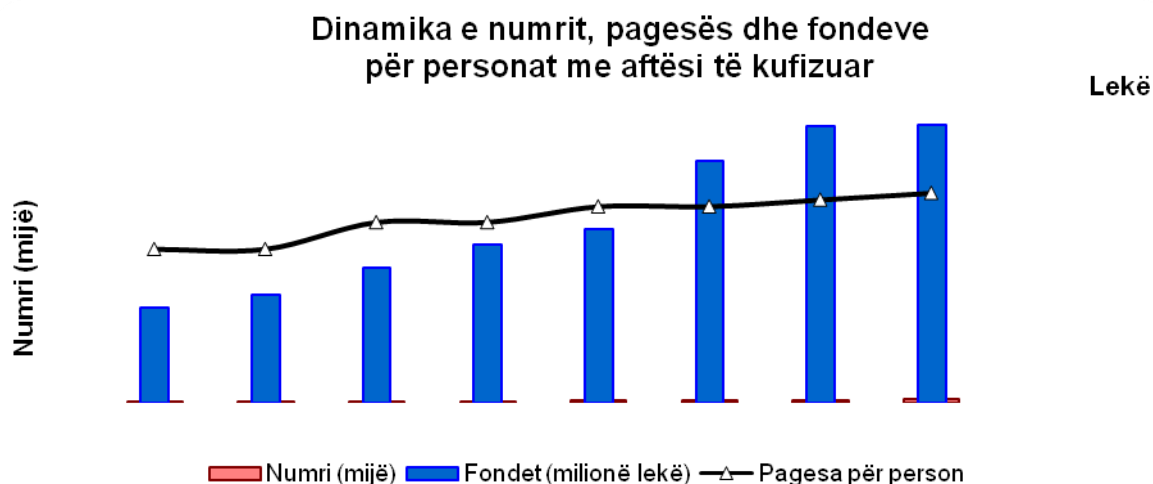
Differently from the economic assistance program, which is based on the assessment of family income, the disability allowance program is based on the assessment of the disability, which may be born or caused due to accidents or illness.

In the year 2004, the disability allowance scheme supported 53.000 people with disabilities. In the year 2011, the scheme supported over 143.000 people with disabilities and their caretakers.

### **Chronological overview –funding for persons with disabilities and their caretakers in Albania 2004- 2011**

<b>Description</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>
<b>Number (in thousand)</b>	53	59	62	64	120	127	131	143
<b>Funds (million ALL)</b>	4,200	4,800	6,000	7,000	7,700	10,700	12,250	12,300
<b>Allowance per person</b>	6,800	6,800	8,000	8,000	8,700	8,700	9,000	9,300





**Graph. 3. Disability Allowance through the years**

There exists a double responsibility for the disability allowance scheme. It is administered at the central and at the local level. The local government units identify the needs of the people with disabilities and help them with the preparation of the necessary documents to be submitted to the Medical Assessment Commissions.

The funding for the disability allowance is entirely covered by the state budget. The local government units are in charge of formulating the request for funding based on the number of the people with disabilities. Once all requests for funding are collected from the LGUs, they are sent for the approval of the Ministry of Labor, Social Affairs and Equal Opportunities, which then forwards the request for funding to the Ministry of Finance.

### III. Social Services

The beneficiaries of social services are children, young people until 25 years old, elderly people, people with disabilities, women and girls in need and all those in danger of becoming part of vulnerable groups.

In reliance to Law No.7870 dated 13.10.1994 “On social insurance in the Republic of Albania”, amended, which regulates the funding for the primary health care services in the country through the obligatory contributive insurance for social care, the scheme of the obligatory health insurance also protects the unemployed, disabled, and people who are recipients of economic and social assistance. They are entitled to full or partial reimbursement for their drugs, on the basis of the list of the reimbursable drugs prepared by the Institute of the Health Care Insurance. Under this scheme, several sub-categories enjoy a special status:

People with Disabilities of Category I (full disability), people sick of CA and TBC, children 0 -12 years old, blind persons, are entitled to receive the first alternative of every drug in the list free of charge.

Pursuant to CoM No.383 dated 19.06.2004 “On the approval of the procedures, tariffs and level of reimbursement of the examination services included in the health care insurance”, amended.

The approval of Law 10383 dated 24.02.2011 “On the obligatory health insurance in the Republic of Albania” (which will enter into force in March 2013) is of a particular importance. The scheme of the obligatory health insurance has widened the scope of its services for its non-contributive beneficiaries, by providing among others for wheelchairs, hearing aids etc.

*Opinion of the Committee:*

Article 13§1

Article 13 provides for the right to social and medical assistance.

It considers as social assistance, benefits for which individual need is the main criterion for eligibility, without any requirement of affiliation to a social security scheme aimed to cover a particular risk, or any requirement of professional activity or payment of contributions. Moreover, as Article 13§1 demonstrates, assistance is given when no social security benefit ensures that the person concerned has sufficient resources or the means to meet the cost of treatment necessary in his or her state of health.<sup>72</sup>

#### Conditions for granting assistance

The system of assistance must be universal in the sense that benefits must be payable to “any person” on the sole ground that he/she is in need. This does not mean that specific benefits cannot be provided for the most vulnerable population categories, as long as persons who do not fall into these categories are entitled to appropriate assistance.<sup>73</sup> <sup>74</sup> Similarly, a minimum age limit may be set on the grant of benefits on condition that the rule ensures that young people below that age limit receive appropriate assistance.<sup>75</sup> By contrast, a condition in respect of length of residence in the country or part of its territory (as distinct from a condition in respect of stay or presence) is not in keeping with Article 13§1.<sup>76</sup>

<sup>72</sup> Conclusions XIII-4, Statement of Interpretation on Articles 12 and 13, pp.34-36.

<sup>73</sup> Conclusions X-2, Spain, p. 121.

<sup>74</sup> Conclusions XIII-4, Statement of Interpretation on Article 13, pp. 54-57.

<sup>75</sup> Conclusions XV-1, France, pp. 270-271.

<sup>76</sup> Conclusions XVIII-1, Czech Republic, p. 238.

The obligation to provide assistance arises as soon as a person is in need, i.e. unable to obtain “adequate resources”. This means the resources needed to live a decent life and “meet basic needs in an adequate manner”.<sup>77 78</sup> Conversely, appropriate assistance is that which enables any person to meet his/her basic needs. The level of resources below which a person is entitled to assistance is assessed by reference to the poverty threshold.

The right to assistance presupposes that the person is unable to obtain resources “either by his own efforts or from other sources, in particular by benefits under a social security scheme”.

The establishment of a link between social assistance and a willingness to seek employment or to receive vocational training is in keeping with the Charter, in so far as such conditions are reasonable and consistent with the aim pursued, that is to say to find a lasting solution to the individual’s difficulties. Reducing or suspending social assistance benefits can only be in conformity with the Charter if it does not deprive the person concerned of his/her means of subsistence.<sup>79 80</sup> Furthermore, it must be possible to appeal against a decision to suspend or reduce assistance.

The reference to social security does not prejudice the link between social security and social assistance which exists within each state, whether the assistance machinery has evolved on the fringe of social security or is an intrinsic part of the system of social protection.

Family solidarity is not regarded as an “other source” where it appears as “a moral value not legally defined”.<sup>81</sup>

### Form of assistance

#### Social assistance

Article 13§1 does not say what form social assistance should take. It may therefore take the form of benefits in cash or in kind. The Committee has observed that “an income guarantee has been established in most Contracting Parties”,<sup>82</sup> but has not in theory made the introduction of an income guarantee system a condition of conformity with Article 13§1. However, the situation of all states which have not

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<sup>77</sup> Conclusions XIII-4, Statement of Interpretation on Article 13§1, pp. 54-57.

<sup>78</sup> Conclusions XIV-1, Portugal, pp. 701-702.

<sup>79</sup> Conclusions XIV-1, Statement of Interpretation on Article 13§1, pp. 52-55.

<sup>80</sup> Conclusions 2006, Estonia, p. 208.

<sup>81</sup> Conclusions XIII-2, Greece, p. 129.

<sup>82</sup> Conclusions XIII-4, Statement of Interpretation on Article 13§1, pp. 54-57.

introduced a general income guarantee system has been judged not to conform on the ground that their system of assistance does not cover the whole population.<sup>83</sup>

The income guarantee for elderly people is examined from the standpoint of Article 23 of the Charter (the right of elderly people to social protection).

#### Medical assistance

Everyone who lacks adequate resources must be able to obtain free of charge “in the event of sickness the care necessitated by his condition”. In this context, medical assistance includes free or subsidised health care or payments to enable persons to pay for the care required by their condition.

The Committee has not determined what care must cover, nor whether it is limited to treating illness. It has stated that “it is not within its competence to define the nature of the care required, or the place where it is given”.<sup>84</sup> The seriousness of the illness cannot however be a factor in refusing to grant medical assistance.<sup>85</sup>

#### Level and duration of assistance

Assistance must be “appropriate”, i.e. make it possible to live a decent life and to cover the individual’s basic needs. In order to assess the level of assistance, the Committee takes into account basic benefits, additional benefits and the poverty threshold in the country, which is set at 50% of the median equivalised income (Median equivalised income (Eurostat): the income of a household is established by summing all monetary income received from any source by each member of the household. In order to reflect differences in household size and composition, this total is divided by the number of “equivalent adults” using a standard scale (the so-called modified OECD equivalence scale). The resulting figure is attributed to each member of the household.) and calculated on the basis of the poverty risk threshold by Eurostat.

The Committee considers that assistance is appropriate where the monthly amount of assistance benefits – basic and/or additional – paid to a person living alone is not manifestly below the poverty threshold in the above sense.<sup>86</sup> In conducting this assessment, the Committee also takes the level of medical assistance into account. Social assistance must be provided for as long as the situation of need persists. Subject to participating in training or accepting employment (see *supra*), the right to social assistance must be conditional only on the criterion of necessity, and the

<sup>83</sup> Conclusions 2006, Moldova, pp. 122-123.

<sup>84</sup> Conclusions XIII-4, Statement of Interpretation on Article 13, pp. 54-57.

<sup>85</sup> Conclusions XIII-2, Greece p. 181 and Conclusions XIII-4, pp. 180-181.

<sup>86</sup> Conclusions 2004, Lithuania, p. 373.

availability of adequate resources must be the sole criterion according to which assistance may be denied, suspended or reduced.<sup>87</sup>

#### Individual right supported by a right of appeal

The right to assistance may not depend solely on the discretion of the administrative authorities: it must constitute an individual right laid down in law and be supported by an effective right of appeal.<sup>88</sup>

#### *Statutory right*

The law must lay down objective criteria and phrase them in sufficiently precise terms. So as not to leave the assessment of the state of need and the necessity of assistance entirely in the hands of the competent authority,<sup>89</sup> the law must define the elements taken into account in order to assess the state of need and make the criteria for assessment of that need clear, as well as the procedure for determining whether a person lacks adequate resources, including the methods used to investigate resources and needs. Such information has been required since the very first conclusions (for example, Conclusions I, p. 66).<sup>90</sup>

#### Effective appeal

The right secured by Article 13§1 places an obligation on states “which they may be called on in court to honour”.<sup>91</sup> This does not have to be a court within the country’s judicial system, or a judicial body in the institutional sense. The Committee focuses on the judicial role of the review body, which is to rule on cases within its jurisdiction and hand down binding decisions based on the law. The body may therefore be an ordinary court or an administrative body, provided that it offers the guarantees mentioned below.

It must be a body independent of the executive and of the parties. In deciding whether a body may be considered independent, the Committee looks at the manner of appointment of its members, the duration of their term of office and existing safeguards against outside pressures (rules governing removal from office, dismissal, instructions, qualifications required, etc.).<sup>92</sup>

All unfavourable decisions concerning the granting and maintenance of assistance must be subject to appeal, including decisions to suspend or reduce assistance benefits, for example in the event of refusal by the person concerned to accept an

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<sup>87</sup> Conclusions XVIII-1, Spain, p. 745.

<sup>88</sup> Conclusions I, Statement of Interpretation on Article 13§1, p. 64.

<sup>89</sup> Conclusions XIII-4, Statement of Interpretation on Article 13, pp. 54-57.

<sup>90</sup> See also the Conclusions XIII-4, Statement of Interpretation on Article 13, p. 54-57.

<sup>91</sup> Conclusions I, Statement of Interpretation on Article 13, p. 64.

<sup>92</sup> Conclusions XVIII-1, Iceland, p. 444.

offer of employment or training.<sup>93</sup> The review body must have the power to judge the case on its merits, not merely on points of law.<sup>94</sup> <sup>95</sup> If this requirement concerning the scope of the appeal is not satisfied in the first instance, it must be satisfied at the subsequent level of review.<sup>96</sup> In order to guarantee applicants the effective exercise of their right of appeal, legal aid must be provided.<sup>97</sup>

### Personal scope

In accordance with the Appendix to the Charter, foreigners who are nationals of Contracting Parties and are lawfully resident or working regularly in the territory of another Party and lack adequate resources must enjoy an individual right to appropriate assistance on an equal footing with nationals,<sup>98</sup> without the need for reciprocity.<sup>99</sup> The appendix to the 1961 Charter requires states to grant to refugees as defined in the Convention relating to the Status of Refugees, signed at Geneva on 28th July 1951, and lawfully staying in its territory, treatment as favourable as possible, and in any case not less favourable than under the obligations accepted by the Contracting Party under the said Convention and under any other existing international instruments applicable to those refugees. The Charter extends that requirement to stateless persons within the meaning of the New York Convention of 1954 on the status of stateless persons.

Equality of treatment must be guaranteed once the foreigner has been given permission to reside lawfully or to work regularly in the territory of a Contracting Party. The Charter does not regulate procedures for admitting foreigners to the territory of Parties, and the rules governing “resident” status are left to national legislation. This stems in particular from the appendix to the Charter in respect of Article 18§1: “It is understood that these provisions [Article 18§1 and paragraph 18 of Part I] are not concerned with the question of entry into the territories of [states which have ratified the Charter] and do not prejudice the provisions of the European Convention on Establishment, signed at Paris on 13th December 1955.”

As a result, that status may be made subject to a condition of length of residence or presence in the territory in order to enjoy equality of treatment, always provided that it is not manifestly excessive.<sup>100</sup>

The guarantee of equal treatment must preferably be enshrined in legislation. The Committee has however accepted that the extension may derive from an

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<sup>93</sup> Conclusions XVIII-I, Hungary, p. 406.

<sup>94</sup> Conclusions XIII-4, Statement of Interpretation on Article 13, pp. 54-57.

<sup>95</sup> Conclusions XVIII-1, Hungary, p. 406.

<sup>96</sup> Conclusions XIII-4, Statement of Interpretation on Article 13, pp. 54-57.

<sup>97</sup> Conclusions XVI-1, Ireland, p. 366.

<sup>98</sup> Conclusions XIII-4, Statement of Interpretation on Article 13, pp. 54-57.

<sup>99</sup> Conclusions VII, Statement of Interpretation on Article 13§4, p. 77.

<sup>100</sup> Conclusions XVIII-1, Czech Republic, p.240.

administrative circular.<sup>101</sup> Equality of treatment means that entitlement to assistance benefits, including income guarantees, is not confined in law to nationals or to certain categories of foreigners<sup>102</sup> and that the criteria applied in practice for the granting of benefits do not differ by reason of nationality.<sup>103</sup> Equality of treatment also implies that additional conditions such as length of residence,<sup>104</sup> or conditions which are harder for foreigners to meet, may not be imposed on them.

### Repatriation

Foreigners lawfully resident in the territory of a Contracting Party cannot be repatriated on the sole ground that they are in need of assistance. As long as their lawful residence or regular work continues, they enjoy equal treatment as well as (where such persons are migrant workers) the protection afforded by Article 19§8, which does not permit expulsion on the ground of needing assistance.<sup>105 106</sup>

Once the validity of the residence and/or work permit has expired, the Parties have no further obligation towards foreigners covered by the Charter, even if they are in a state of need. However, this does not mean that a country's authorities are authorised to withdraw a residence permit solely on the grounds that the person concerned is without resources and unable to provide for the needs of his family<sup>107</sup>.

### Article 13§2

Under Article 13§2, persons receiving assistance must not suffer as a result any diminution of their political or social rights. Any discrimination against persons receiving assistance that might result from an express provision must be eradicated.<sup>108 109</sup>

The social rights concerned must at least include those embodied in the Charter, starting with the right to assistance itself. For example, confining eligibility for social services in general and assistance in particular to holders of identity documents or certificates of residence in a particular municipality could be incompatible with Article 13§2 as persons without the resources necessary to establish a fixed place of residence might be deprived of assistance.<sup>110</sup>

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<sup>101</sup> Conclusions XIV-1, Greece, p. 378.

<sup>102</sup> Conclusions XVIII-1, Belgium, p. 88.

<sup>103</sup> Conclusions XVIII-1, Germany, p. 319.

<sup>104</sup> Conclusions XVIII-1, Denmark, pp.144-145.

<sup>105</sup> Conclusions XIII-4, Statement of Interpretation on Article 13§1, pp. 54-57.

<sup>106</sup> Conclusions XIV-1, Statement of Interpretation on Article 13, pp. 54-55.

<sup>107</sup> Conclusions XIV-1, Norway, p. 661.

<sup>108</sup> Conclusions I, Statement of Interpretation on Article 13§2, p. 64.

<sup>109</sup> Conclusions XIII-4, Statement of Interpretation on Article 13§2, pp. 58-59.

<sup>110</sup> Conclusions 2006, Bulgaria, p. 126.

The political rights concerned go beyond those embodied in the European Convention on Human Rights.<sup>111</sup> They include, for example, access to civil service posts and the right to vote. Since political rights such as the right to vote are in principle restricted to nationals, on the grounds that they imply a role in the exercise of public authority, the Committee has ruled that "[any] assessment of a possible discrimination on this basis must of course be made in the light of the political rights these foreigners may claim under domestic law, it being understood that foreigners with a certain length of residence may enjoy more extensive rights".<sup>112</sup>

### Article 13§3

Article 13§3 is concerned specifically with services offering advice and personal assistance to persons without adequate resources or at risk of becoming so.

Article 14§1 is concerned with social services in general whereas Article 13§3 is a more specific provision.<sup>113</sup> Measures to co-ordinate services concerned with poverty and social exclusion are considered under Article 30 of the Charter and those concerned with social housing and measures to deal with homelessness are covered by Article 31.<sup>114</sup>

### Benefits and services

Article 13§3 does not require specific services separate from the social welfare services of Article 14, so long as persons without adequate resources receive benefits and services adapted to their needs.<sup>115</sup> What distinguish Article 13§3 from Article 14 therefore are the types of benefits and services under consideration.

Article 13§3 must be seen as complementing Article 13§1. The Committee has stated that "the ultimate aim in any system of social assistance must be to work towards a situation where assistance is no longer required".<sup>116</sup> The social services covered by Article 13§3 must therefore play a preventive, supportive and treatment role. This means offering advice and assistance to make those concerned fully aware of their entitlement to social and medical assistance and how they can exercise those rights.

### Criteria for equal and effective access

The criteria selected by the Committee to determine whether those concerned have equal and effective access to services and to assess the quality of those services and other issues relating to users' rights and participation are the same as those used to assess general social services (see Article 14). In countries where the general social

<sup>111</sup> Conclusions XVIII-1, Malta, pp. 528-529.

<sup>112</sup> Conclusions XIII-4, Statement of Interpretation on Article 13§2, pp. 54-57.

<sup>113</sup> Conclusions 2005, Statement of Interpretation on Article 14§1.

<sup>114</sup> Conclusions 2005, Statement of Interpretation on Article 14§1.

<sup>115</sup> Conclusions XIII-4, Statement of Interpretation on Article 13, pp. 54-57.

<sup>116</sup> Conclusions XIV-1, Statement of Interpretation on Article 13, pp. 52.



services are responsible for the application of Article 13§3, the Committee refers to its assessment of the situation under Article 14§1.<sup>117</sup> The one distinguishing feature of Article 13§3 is that the services concerned must be provided free of charge.<sup>118</sup>

#### Article 13§4

Article 13§4 grants foreign nationals entitlement to emergency social and medical assistance.

#### Beneficiaries of Article 13§4

The personal scope of Article 13§4 differs from that of other Charter provisions. The beneficiaries of this right to social and medical assistance are foreign nationals who are lawfully present in a particular country but do not have resident status and ones who are unlawfully present. This is stated in the Charter itself. Paragraph 1§1 of the Appendix, concerning its personal scope, states that Articles 1 to 17 and 20 to 31 apply to foreigners "only in so far as they are nationals of other Parties lawfully resident or working regularly within the territory of the Party concerned", but adds that this rule is "without prejudice to Article 12, paragraph 4, and Article 13, paragraph 4". Article 13 para. 4 refers to "nationals of other Contracting Parties lawfully within their territories". The Committee has extended the scope of the right to emergency medical assistance.<sup>119</sup>

By definition, no condition of length of presence can be set on the right to emergency assistance.<sup>120</sup>

#### Right to emergency assistance

States are required to provide for those concerned to cope with an immediate state of need (accommodation, food, emergency care and clothing).<sup>121</sup> They are not required to apply the guaranteed income arrangements under their social protection systems. While individuals' need must be sufficiently urgent and serious to entitle them to assistance under Article 13§4, this should not be interpreted too narrowly.<sup>122</sup> The provision of emergency medical care must be governed by the individual's particular state of health.<sup>123</sup>

#### Conditions governing repatriation – links with the 1953 Convention

<sup>117</sup> Conclusions XVIII-1, Iceland, p. 447.

<sup>118</sup> Conclusions XVII-2 and 2005, Statement of Interpretation on Article 14§1.

<sup>119</sup> International Federation of Human Rights Leagues (FIDH) v. France, Complaint No. 14/2003, Decision on the merits of 8 September 2004, §32.

<sup>120</sup> Conclusions XIV-1, United Kingdom, p. 845.

<sup>121</sup> Conclusions XIII-4, Statement of Interpretation on Article 13, pp. 54-57.

<sup>122</sup> Conclusions XIV-1, Netherlands, p. 598.

<sup>123</sup> Conclusions XIV-1, Iceland, p. 417.

*Foreign nationals' right to assistance must be "in accordance with [states'] obligations under the European Convention on Social Medical Assistance, signed at Paris on 11<sup>th</sup> December 1953".*

Since the personal and material scope of Article 13§4 is defined in the Charter, the only link between Article 13§4<sup>124</sup> and the 1953 Convention concerns states' right to repatriate foreigners because they are in need of assistance, in accordance with the Convention's provisions on repatriation. The conditions governing repatriation (Articles 7-10 of the Convention) are: Article 7 authorises parties to repatriate persons on the sole ground that they are in need of assistance. This option may only be applied in the greatest moderation and then only where there is no objection on humanitarian grounds, and subject to the following specific conditions:

- those concerned have not been continuously resident in the party's territory for at least five years. This condition does not apply to nationals of states party to the Charter since foreign nationals legally present in another party may not in any case be repatriated on the ground that they need assistance (see above);
- they are in a fit state of health to be transported;
- they have no close ties in the territory in which they are resident.
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In addition, repatriating states must bear the cost of repatriation as far as the frontier of the territory to which the national is being repatriated (Article 8) and provide relevant information to the diplomatic or consular authorities of the country of origin and the authorities of any country or countries of transit (Article 10). Finally, if the country of which an assisted person claims to be a national does not recognise him or her as such, the grounds of the disclaimer must be forwarded to the country of residence (Article 9).

However, the requirement to accept and apply the Article 13§4 provision on repatriation is not conditional on ratification of the 1953 Convention, which means that States that are bound by Article 13§4 must also comply with the Convention provisions on the conditions and arrangements for repatriation of nationals of Charter parties that have not ratified the Convention. According to the Appendix to Article 13§3, states that have ratified the Charter but are not parties to the Convention may accept Article 13§4, "provided that they grant to nationals of other [states that have ratified the Charter] a treatment which is in conformity with the provisions of the said convention".

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<sup>124</sup> Conclusions XIV-1, Statement of Interpretation on Article 13, p. 52.

<sup>125</sup> Conclusions XIII-4, Statement of Interpretation on Article 13, pp. 54-57.

The Committee considers that Albania could accept Article 13§§2, 3 and 4. As to Article 13§1 the situation in law and practice at the present moment may not provide an adequate level of the assistance provided.

## **Article 14§§1 and 2**

### *Situation in Albania:*

A system for the provision of social services through residential and daily centers has been set up to support the groups threatened by social exclusion. These services include representation, lobbying, residential and daily services, psycho-social services, awareness-raising, services at home and so on.

The public social services are provided through 24 residential and 5 daily centers, funded by the state budget. They serve to 1200 clients in Albania's main regions. There are 5 residential institutions in Shkodra, 2 residential institutions in Durres, 7 in Tirana, 4 each in Vlora and Saranda, 3 in Korca and Lezha, 2 in Berat, and one each in Fier and Gjirokaster.

In addition to the public residential services, over the last years, non-public residential services are being provided by NGOs or by religious organizations. They provide daily centre services, services at home and residential centre services. These services are provided to orphans or to children with social problems, to people with disabilities, to the elderly, to drug addicts etc. Most of the non-public community-based services are funded by foreign donors.

At present the social services system is being thoroughly reformed through:

- Establishment of new social community-based services
- Decentralization of social services, with the Ministry of Labor, Social Affairs and Equal Opportunities delegating funds for decentralized services provided by the local authorities
- Deinstitutionalization of residential services
- Involvement of NGOs and public and private operators in the social services provision

Work is underway to improve the quality of social services along the following directions:

- The new social services standards, the standards for services to children in residential institutions, the standards of services for people with disabilities, for elderly people in residential centres, daily centres and standards of services for victims of trafficking have been approved.
- The public and private entities providing services in the local government units through the procedures of the National Licencing Centre have been licensed.

- The Social Services Inspectoriate, responsible for the control of the quality standards of social services and for ensuring the sustainability of these services has been restructured.
- Trainings have been organised to ensure the improvement of the capacities of human resources at the local and central level.

*Opinion of the Committee:*

Article 14§1

The right to benefit from social welfare services provided for by Article 14§1<sup>126</sup> requires Parties to set up a network of social services to help people to reach or maintain well-being and to overcome any problems of social adjustment. The Committee reviews the overall organisation and functioning of social services under Article 14§1.

Social services include in particular counselling, advice, rehabilitation and other forms of support from social workers, home help services (assistance in the running of the home, personal hygiene, social support, delivery of meals), residential care, and social emergency care (shelters). Issues such as childcare, childminding, domestic violence, family mediation, adoption, foster and residential childcare, services relating to child abuse, and services for the elderly are primarily covered by Articles 7§10, 16, 17, 23 and 27. Measures to fight poverty and social exclusion are dealt with under Article 30 of the Charter, while social housing services and measures to combat homelessness are dealt with under Article 31.

The provision of social welfare services concerns everybody lacking capabilities to cope, in particular the vulnerable groups and individuals who have a social problem. Groups which are vulnerable – children, the family, the elderly, people with disabilities, young people with problems, young offenders, refugees, the homeless, alcohol and drug abusers, victims of domestic violence and former prisoners – should be able to avail themselves of social services in practice. Since many of these categories are also dealt with by more specific provisions of the Charter, under Article 14 the Committee reviews the overall availability of such services and refers to those other provisions for the detailed analysis of the services afforded. This overall review follows the criteria mentioned below as regards effective and equal access to, and quality of the services delivered as well as issues of rights of clients and participation.

The right to social services must be guaranteed in law and in practice. Effective and equal access to social services implies that:

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<sup>126</sup> Conclusions 2005, Statement of Interpretation on Article 14§1. See, for example, Conclusions 2005, Bulgaria, pp. 32-33.

- An individual right of access to counselling and advice from social services shall be guaranteed to everyone. Access to other kind of services can be organised according to eligibility criteria, which shall be not too restrictive and at any event ensure care in case of urgent need;
- Access to social services should be guaranteed to those who lack personal capabilities and means to cope. The goal of welfare services is the well-being, the capability to become self-sufficient and the adjustment of the individual and groups to the social environment;
- The rights of the client shall be protected: any decision should be made in consultation with and not against the will of the client; remedies shall be available in terms of complaints and a right to appeal to an independent body in urgent cases of discrimination and violation against human dignity;
- Social services may be provided subject to fees, fixed or variable, but they must not be so high as to prevent the effective access of these services. For persons lacking adequate financial resources in the terms of Article 13§1 such services should be provided free of charge;
- The geographical distribution of these services shall be sufficiently wide;
- Recourse to these services must not interfere with people's right to privacy, including protection of personal data.

Social services must have resources matching their responsibilities and the changing needs of users. This implies that:

- staff shall be qualified and in sufficient numbers;
- decision-making shall be as close to users as possible;
- there must be mechanisms for supervising the adequacy of services, public as well as private.

#### Article 14§2

Article 14§2 requires States to provide support for voluntary associations seeking to establish social welfare services<sup>127</sup>. This does not imply a uniform model, and States may achieve this goal in different ways: they may promote the establishment of social services jointly run by public bodies, private concerns and voluntary associations, or may leave the provision of certain services entirely to the voluntary sector. The "individuals and voluntary or other organisations" referred to in paragraph 2 include, the voluntary sector (non-governmental organisations and other associations), private individuals, and private firms.

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<sup>127</sup> Conclusions 2005, Statement of Interpretation on Article 14§2, all countries. See, in particular, Conclusions 2005, Bulgaria, pp. 37-38.

The Committee examines all forms of support and care mentioned under Article 14§1 as well as financial assistance or tax incentives for the same purpose. It also verifies that the Parties continue to ensure that services are accessible on an equal footing to all and are effective, in keeping with the criteria mentioned in Article 14§1. Specifically, Parties must ensure that public and private services are properly coordinated, and that efficiency does not suffer because of the number of providers involved. In order to control the quality of services and ensure the rights of the users as well as the respect of human dignity and basic freedoms, effective preventive and reparative supervisory system is required.

Article 14§2 also requires States to encourage individuals and organisations to play a part in maintaining services, for example by taking action to strengthen the dialogue with civil society in areas of welfare policy which affect the social welfare services. This includes action to promote representation of specific user-groups in bodies where the public authorities are also represented, and action to promote consultation of users on questions concerning organisation of the various social services and the aid they provide.

The Committee considers that Albania could accept Article 14§§1 and 2. It must however aim at increasing the quality and quantity of the social services.

## **Article 15§§1-3**

### *Situation in Albania:*

In Albania there exist several definitions of PWD, as provided by the statutes that provide for protection for specific groups of PWD, by the National Strategy of PWD, by law no.9355 dated 10.03.2005 and so on.

According to the National Strategy of PWD, approved by Council of Ministers' Decree No.7 dated 8.01.2005 "people with disabilities" are considered the persons whose physical, mental and psychological conditions differ for over six months from the typical conditions for the age, that results in limitations in their participation in the social life.

A difference from the typical conditions means loss or limitations of the physical, mental, or psychological structure of a person. Disability can be caused by illness or injury, and may impact the quality of participation in one or several fields of life.

According to the provisions of law no.9355 dated 10.03.2005 "On social assistance and services", a person with disabilities is the individual with limited abilities as a consequence of the damages of his/her physical, intellectual, or sensory constitution. The damage can be born or acquired because of incidents, illness, whether temporary or permanent, which is not necessarily related to employment.

People with disabilities are evaluated by special medico-legal commissions: The Commission for the Assessment of the Ability to Work (KMCAP) and the Medical Blindness Assessment Commission (KMPV).

KMCAP is established under the line authority of the Social Insurance Institute. It functions through 26 regional commissions. The higher level KMCAP is established in Tirana, which has the competence to assess complaints against the regional KMCAPs.

KMPV is established under the State Social Service. It assesses the blindness level and the hereto related level of compensation due to the blind. It also enables blind people to have a caretaker if they cannot look after themselves.

The persons who undergo the KMCAP assessment are divided into:

1. Persons who have suffered injuries whilst being regularly insured. This group of persons is entitled to the disability allowances granted by the Social Insurance Institute.
2. Persons who have not paid any insurance contribution, owing to the fact that their disability has been caused by causes not related to their employment. They might have been disabled since their birth, encountered their disability before the legal working age, or they might have not been insured. This



category is not entitled to any allowance from the social security system, as these persons have not contributed to the scheme. These persons receive a monthly disability allowance, that is paid directly by the state so as to enable them to cover their social and health-related cost, for the purpose of maintaining a sustainable standard of living.

In order to assess the situation and the entitlements of the people with disabilities, the KMCAP refers to a Regulation on Diseases, Dysfunctions, and Situation of People with Disabilities, which provides guidance to its members in their assessment work. The new regulation for the medical assessment criteria for PWD was approved through the joint order no. 382 of the Minister of Labor and Minister of Health on 26.02..2007.

The KMCAP assessment consists of the evaluation of the personal files and in the physical check-up of the persons who have their disability assessed. Further to the evaluation of the documents presented and of the physical situation of the person, KMCAP issues and attestation that lays out:

- Causes for the disability
- Category of disability
- Level of ability to work
- Need for a caretaker

Upon receiving the KMCAP decision, the person is entitled to benefit from the social programs as defined by the relevant laws and regulations.

*Opinion of the Committee:*

Article 15§1

According to Article 15§1, all persons with disabilities have a right to education and training: primary education, general and vocational secondary education as well as other forms of vocational training. Article 15 applies to all persons with disabilities regardless of the nature and origin of their disability and irrespective of their age. It thus also covers both children and adults who face particular disadvantages in education, such as persons with intellectual disabilities. Under Article 15§1, the Committee therefore considers necessary the existence of non-discrimination legislation as an important tool for the advancement of the inclusion of children with disabilities into general or mainstream educational schemes. Such legislation should, as a minimum, require a compelling justification for special or segregated educational systems and confer an effective remedy on those who are found to have been unlawfully excluded or segregated or otherwise denied an effective right to education.

Legislation may consist of general anti-discrimination legislation, specific legislation concerning education, or a combination of the two<sup>128</sup>.

Persons with disabilities (children, adolescents, adults) must be integrated into mainstream facilities; education and training must be made available within the framework of ordinary schemes and, only where this is not possible, through special schools. Lessons provided in mainstream schools and, if need be, in special schools must be adequate.<sup>129</sup> This means that in order to guarantee an equal and non-discriminatory treatment of persons with disabilities, mainstream and special schools must ensure adapted teaching. States must take measures (such as the support of teachers and the accessibility of premises) in order to enable integration and must demonstrate that tangible progress is being made in setting up education systems which exclude nobody.<sup>130</sup>

#### Article 15§2

Article 15§2 requires states to promote access to employment on the open labour market for persons with disabilities. It applies to both physically and intellectually disabled persons.<sup>131</sup> To this aim, legislation must prohibit discrimination on the basis of disability in employment<sup>132</sup>, as well as the dismissal on the basis of disability. In addition, there must be obligations on the employer to take steps in accordance with the requirement of reasonable accommodation to ensure effective access to employment and to keep in employment persons with disabilities, in particular persons who have become disabled while in their employment as a result of an industrial accident or occupational disease<sup>133</sup>.

States enjoy a margin of discretion concerning the other measures they take in order to promote access to employment of persons with disability. Article 15§2 does not require the introduction of quotas but, when such a system is applied, the Committee examines its effectiveness when assessing conformity with Article 15§2.<sup>134</sup> Sheltered employment facilities must be reserved for those persons with disabilities who, due to their disability, cannot be integrated into the open labour market. They should aim to assist their beneficiaries to enter the open labour market. Persons working in sheltered employment facilities where production is the main activity are entitled to the basic provisions of labour law and in particular the right to fair remuneration and trade union rights.<sup>135</sup>

<sup>128</sup> Conclusions 2007, Statement of Interpretation on Article 15 § 1, p.12.

<sup>129</sup> *Association internationale Autisme-Europe (AIAE) v. France*, Complaint No. 13/2002, Decision on the merits of 4 November 2003, §48.

<sup>130</sup> Conclusions 2005, Cyprus, p. 96.

<sup>131</sup> Conclusions I, Statement of Interpretation on article 15§2, p. 208.

<sup>132</sup> Conclusions 2003, Slovenia, p. 503.

<sup>133</sup> Conclusions 2007, Statement of Interpretation on Article 15§2, §10, p. 12.

<sup>134</sup> Conclusions XIV-2, Belgium, p. 152.

<sup>135</sup> Conclusions XVII-2, Czech Republic, pp. 145-146.

### Article 15§3

The right of persons with disabilities to social integration provided for by Article 15§3 implies that barriers to communication and mobility be removed in order to enable access to transport (land, rail, sea and air), housing (public, social and private), cultural activities and leisure (social and sporting activities).<sup>136</sup> To this purpose Article 15§3 requires:<sup>137</sup>

- the existence of comprehensive non-discrimination legislation covering both the public and private sphere in fields such as housing, transport, telecommunications and cultural and leisure activities and effective remedies for those who have been unlawfully treated;
- the adoption of a coherent policy in the disability context: positive action measures to achieve the goals of social integration and full participation of persons with disabilities. Such measures should have a clear legal basis and be coordinated.

People with disabilities should have a voice in the design, implementation and review of such a policy;<sup>138</sup> technical aids must be available either for free or subject to a contribution towards their cost;<sup>139</sup> telecommunications and new information technology must be accessible<sup>140</sup> and sign language must have an official status.<sup>141</sup> Public transports (land, rail, sea and air), all newly constructed or renovated public buildings, facilities and buildings open to the public, and cultural and leisure activities should be physically accessible.<sup>142</sup> The needs of persons with disabilities must be taken into account in housing policies, including the construction of an adequate supply of suitable, public, social or private, housing. Further, financial assistance should be provided for the adaptation of existing housing.<sup>143</sup>

The Committee considers that at the present moment the situation in practice may not ensure that Albania meets the standards under Article 15§§1, 2 and 3. However, in view of Albania's ratification of the UN Convention on the right of persons with disabilities, Albania will improve the situation in the near future and will, eventually, be in a position to accept Article 15§§1, 2 and 3.

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<sup>136</sup> Conclusions 2005, Norway, p. 558.

<sup>137</sup> Conclusions 2007, Slovenia, p.1033.

<sup>138</sup> Conclusions 2003, Italy, p. 297.

<sup>139</sup> Conclusions 2007, Finland, p.455.

<sup>140</sup> Conclusions 2005, Estonia, p. 188.

<sup>141</sup> Conclusions 2003, Slovenia, p. 509.

<sup>142</sup> Conclusions 2003, Italy, p. 299.

<sup>143</sup> Conclusions 2003, Italy, p. 299.

## Article 16

### *Situation in Albania:*

In the framework of the social assistance programs of the Ministry of Labor, Social Affairs and Equal Opportunities funded by the state budget, children with disabilities receive cash disbursements and are entitled to the services provided by 6 residential centers located in Tirana, Durrës, Korça, Berat, Vlora and Shkodra and in three daily centers in Korça, Lezha and Durrës.

Further to the improvements of the Council of Ministers' Decree No. 618 date 7.09.2006 "On the definition of the criteria, documentation and amount of disability benefits", the allowances for the people with disabilities have increase from 6800 Albanian Lek a month in the year 2006 to 9300 Lek a month in September 2011.

The Social Services Department at the MoLSAO cooperates with donors and NGOs for the establishment of community services for children with disabilities. In Shkodra, in cooperation with the "Shpresa" project, 6 community centers providing services for 54 children with disabilities from the orphanages and from the Shkodra Development Centre have been established.

On the basis of an agreement with the Swiss Cooperation, the "Lira" Project is about to establish a daily centre for PWD, and special apartments for independent living.

Another project for children with disabilities will be funded by the Federal Republic of Germany in the framework of the German technical assistance.

Prevention, protection and integration of trafficked and abandoned children

In the framework of the fight against the trafficking of human beings, following strategies are being implemented:

- National Strategy for the Fight Against the Trafficking of Human Beings
- National Strategy against the Trafficking of Children and for the Protection of Children Victims of Trafficking, in the framework of the Convention for the Protection of Children Rights.

The Parliament of Albania has ratified the Council of Europe Convention against the Trafficking of Human Beings in November 2006, through law 9642 date 20.11.2006.

The above strategies aim at: (i) prevention of trafficking through the sensitization of the groups threatened by trafficking (ii) coordination of the efforts of the public structures and of the NGO sectors to this purpose (iii) protection of the victims of trafficking through accommodation and reception services (iv) investigation and sentencing of the traffickers (v) cooperation between the responsible authorities of the countries of destination and origin.

For the purpose of protecting trafficked children, a National Centre for the Victims of Trafficking has been established. In the year 2003, a public centre for the accommodation of trafficked girls, women and children was established. This centre provides services to repatriated children, until they are brought back in their families or another arrangement in their best interest has been made.

- Responsible authority

In the framework of the cooperation agreement between Albania and Greece for the protection of the children victims to trafficking, a joint order of the Minister of Interior, Minister of Foreign Affairs and Minister of Labour established a special authority responsible for the coordination of activities and for the provision of referral and reintegration services for the trafficked children and for their reintegration.

- Regional Anti-Trafficking Committees

In September 2006, upon the approval of a Prime Minister's Order, Albania established its regional anti-trafficking committees, which play an important role for the assessment of the vulnerable groups, and for the prevention of this phenomenon. They are composed of main local actors, including representatives of the regional police districts, social services, education, health and local government units.

The regional anti-trafficking committees and the responsible authority work together to improve the level of protection for children endangered by trafficking and to apply new procedures for their identification, referral and re-integration.

- In order to denounce cases of trafficking, a free nationwide hotline has been established (0 800 12 12). This is a further instrument that allows the general public to denounce trafficking cases and to receive information on legal ways to migrate.
- The responsible authority has established a database that collects information entered by Mol, MFA, and MoLSAEO on the cases of returned and referred victims of trafficking in Albania.

#### Financial support for custodian families

Temporary or permanent custody for the children in need and for orphans by families able to take this responsibility represents a new service, until now provided only by NGOs. This type of custody prevents the placement of these children in residential centers. In Albania, the most used form of custody is leaving the children with their relatives.

In cooperation with UNICEF, Ministry of Labor, Social Affairs and Equal Opportunities has drafted the Strategy for the Custody of Children in need. Also, a CoM “On the criteria, documentation and procedures for custody services” has been passed, thus enabling for the provision of alternative services for children in need.

These documents lay out the phases for the implementation of the custody services, including its promotion, and also the selection of the custodian families, the assessment and monitoring of the children and so on.

The custody will improve the quality of the service for orphan children by families with social problems. This type of service will be provided by the custodian families (relatives) who take over the legal responsibility for the child. This platform will further support the good tradition of care and support for the orphans and to family members in need by their relatives.

*Opinion of the Committee:*

1. Social protection

Housing for families

Article 16 guarantees a right to decent housing from the family prospective. In this context this provision focuses on the right of families to an adequate supply of housing, on the obligation to take into account their needs in framing and implementing housing policies and ensuring that existing housing be of an adequate standard and includes essential services.<sup>144</sup> The destruction of housing or forced evacuation of villages is contrary to Article 16. In that situation, States must provide effective remedies to the victims,<sup>145</sup> and must take measures in order to rehouse families in decent accommodation or to provide financial assistance.<sup>146</sup> Roma families should effectively enjoy such right. Therefore, the following points are examined: the availability of suitable temporary and permanent accommodation.

Childcare facilities

States are required to ensure that childcare facilities are available, affordable and of good quality (coverage with respect to the number of children aged 0-6, ratio of staff to children, staff training, suitable premises and cost of childcare to parents, etc.).<sup>147</sup>

Family counselling services

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<sup>144</sup> European Roma Rights Center (ERRC) v. Bulgaria, Complaint No. 31§2005, Decision on admissibility of 10 October 2005, §9.

<sup>145</sup> Conclusions XIII-1, Turkey, pp. 258-259.

<sup>146</sup> Conclusions XIII-3, Turkey, pp. 381-385.

<sup>147</sup> Conclusions XVII-1, Turkey, p. 490.

Families should have access to appropriate social services, in particular in times of difficulty. States should provide *inter alia* family counselling and psychological guidance advice on child raising.

### Participation of associations representing families

In order to ensure that the views of families are taken into account in the formulation of family policy, all civil organisations representing families should be consulted by the relevant authorities.<sup>148</sup>

## 2. Legal Protection

### Rights and obligations of spouses

Spouses must be equal, particularly in respect of rights and duties within the couple (marital authority, ownership, administration and use of property,<sup>149</sup> etc.) and children (parental authority, management of children's property). In cases of family break down, Article 16 requires the provision of legal arrangements to settle marital conflicts and, in particular, conflicts relating to children: care and maintenance, custody and access to children.

### Mediation services

States are required to provide family mediation services. The following issues are examined: access to the said services as well as whether they are free of charge and cover the whole country, and how effective they are.<sup>150</sup>

### Domestic violence against women

Article 16 applies to all forms of domestic violence. Since violence against children is more specifically addressed by Article 17, the issue is examined under this provision. With a view to interpreting States obligations in this field, it is appropriate to refer to the European Court of Human Rights (“the Court”) judgment *X and Y v. the Netherlands* of 26 March 1985. The Court pointed out that Article 8 of the European Convention on Human Rights which guarantees the right to respect for private and family life, does not only prevent the State from interfering but it implies also positive obligations in order to ensure effective respect for the rights guaranteed by Article 8. “These obligations may involve the adoption of measures designed to secure respect for private life even in the sphere of the relations of individuals between themselves” (§23).

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<sup>148</sup> Conclusions 2006, Statement of Interpretation on Article 16, p. 15.

<sup>149</sup> Conclusions XVI-1, United Kingdom, p. 699.

<sup>150</sup> Conclusions 2006, Statement of Interpretation on Article 16, p. 14.

The same applies to Article 16. States are required to ensure an adequate protection with respect to women, both in law (appropriate measures –including restraining orders- and punishments for perpetrators, fair compensation for the pecuniary and non-pecuniary damage sustained by victims, the possibility for victims – and associations acting on their behalf – to take their cases to court and special arrangements for the examination of victims in court) and in practice (recording and analysis of reliable data, training, particularly for police officers, and services to reduce the risk of violence and support and rehabilitate victims). These issues are assessed in the light of the principles laid down in Recommendation Rec(2002)5 of the Committee of Ministers of the Council of Europe to member States on the protection of women against violence and Parliamentary Assembly Recommendation 1681 (2004) on a campaign to combat domestic violence against women in Europe.<sup>151</sup>

### 3. Economic protection

#### Overview of family benefits

States are required to ensure the economic protection of the family by appropriate means. The primary means should be family or child benefits provided as part of social security, available either universally or subject to a means-test.<sup>152</sup>

#### Family benefits of a sufficient amount

These benefits must constitute an adequate income supplement for a significant number of families. Adequacy is assessed with respect to the median equivalised income (Median equivalised income (Eurostat): the income of a household is established by summing all monetary income received from any source by each member of the household. In order to reflect differences in household size and composition, this total is divided by the number of "equivalent adults" using a standard scale (the so-called modified OECD equivalence scale). The resulting figure is attributed to each member of the household.), as calculated by Eurostat.<sup>153</sup> <sup>154</sup> The level of benefit should be adjusted as necessary to keep pace with inflation. Other forms of economic protection, such as birth grants, additional payments to large families or tax relief in respect of children, are also relevant to the implementation of this provision.

#### Vulnerable families

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<sup>151</sup> Conclusions 2006, Statement of Interpretation on Article 16, p. 14.

<sup>152</sup> Conclusions 2006, Statement of Interpretation on Article 16, p. 14.

<sup>153</sup> Conclusions 2006, Statement of Interpretation on Article 16, p. 14.

<sup>154</sup> Conclusions 2006, Estonia, p.215.



States are required to ensure the protection of vulnerable families, single-parent families, Roma families, in accordance with the principle of equality of treatment.

#### Equal treatment

States Parties must in principle ensure equal treatment of foreign nationals of other States Parties who are lawfully resident or regularly working in their territory with respect to family benefits. However, by analogy with its approach under Article 12§4 based on the Appendix to that provision, the Committee makes a distinction between contributory and non-contributory benefits: it considers that Article 16 precludes length of residence requirements as far as contributory benefits are concerned, but that States may apply a length of residence requirement as regards non-contributory benefits on condition that the length is not excessive. The proportionality of such length of residence requirements is examined on a case-by-case basis having regard to the nature and purpose of the benefit. The Committee has held periods of 6-12 months to be reasonable and therefore in conformity with Article 16 (see for example Conclusions XV-2, Slovakia and Conclusions XV-1, Sweden). On the other hand it has held periods of 3-5 years to be manifestly excessive and therefore in violation of Article 16 (see for example Conclusions XVII-1, Austria, Conclusions XVIII-1, Slovakia and Conclusions XVIII-1, Poland).

The Committee considers that Albania may not meet the standards for economic protection for the families as required under Article 16.

## Article 17

### *Situation in Albania:*

Article 17 of the European Social Charter has been integrated into the Albanian legislation, as regards the part on the protection of children rights.

More concretely, the provisions of Law No. 10347, Date 04.11.2010 “On the protection of children rights” address in particular the rights stipulated under Article 17 of the European Social Charter.

Paragraph 1 (a) of the European Social Charter is addressed by Articles 2, 6, 15, 16, 18, 19, 20, 27, 28, 30, 32, 33, 34, 35, 36, 37, 38, 39, 40 of Law No. 10347, Date 04.11.2010 “On the protection of children rights”.

The sub legal acts needed for the implementation of Law “On the protection of children rights” establish the institutions that safeguard the rights laid out in Article 17 (part 1 A) of the Charter. These acts are the Prime Minister’s Order No. 73, dated 03.08.2011 “On the establishment of the National Council for Child Protection”, Council of Ministers’ Decision Nr 201, dated 16.03. 2011, “On the organization and functioning of the National Council for Child Protection”, Prime Minister’s Order dated 18.03.2011 “On the structure and staffing of the State Agency for the Protection of Children Rights”, and the Council of Ministers’ Decision “On the organization and functioning of the State Agency for the Protection of Children Rights”.

The Council of Ministers’ draft decisions providing for these rights have been already drafted. At present, these drafts are being commented by the line ministries and by other institutions. The drafts are expected to be approved by CoM in the first quarter of the year 2012. The list of the drafts is the following:

1. Draft Council of Ministers’ Decision “On the exchange of information and statistical data required by the Agency and by the responsible state structures at the central and local level”
2. Draft Council of Ministers’ Decision “On the control procedures and sanctions applied by the State Agency for the Protection of Children’s Rights”
3. Draft Council of Ministers’ Decision “On the coordination of the local and central level institutions in the field of the protection of children rights”
4. Draft Council of Ministers’ Decision “On the cooperation between the state institutions and non-for-profits in the field of the protection of children rights”

5. Draft Council of Ministers' Decision "On the establishment and functioning of the mechanism for the coordination of efforts between the responsible state institutions for the referral of the cases of children in danger"

Paragraph 1b, Article 17 of the Charter (Protection of Children from neglect, violence, and exploitation), is covered by Articles 21, 22, 24, 28, 29 of the Law "On Children Rights Protection".

Furthermore, the amendment of Law No. 9669, dated 18.12.2006 "On measures against domestic violence" protects the rights of the children who is a victim of domestic violence, by serving his best interest. Some of the amendments to this law extend the definition of the subjects entitled to request a protection order for minors, by including therein the police, prosecutor's office, and the persons who are legally responsible for the children.

Furthermore, article 7 of Law 10329 dated 30.09.2010 "On some additions and changes in the law No. 9669, dated 18.12.2006 "On measures against domestic violence" (amended) allows the court to decide about issuing an immediate protection order for a child within 24 hours from receiving a request.

The draft decision "On the establishment and functioning of the mechanism for the coordination of efforts between the responsible state institutions for the referral of the cases of children in danger" specifically targets abused and trafficking children, and children at risk. Also, other decisions contribute directly or indirectly to their protection.

Paragraph 1c of the Article 17 of the Charter is practically addressed by Article 29 of the Law "On Children Rights Protection", which provides for the alternative care from the responsible state authorities in case a child is removed temporarily or permanently from family care.

Paragraph 2 of the Article 17 of the Charter is specifically addressed by Articles 6, 15, 16, 28, 30 of the Law "On Children Rights Protection" and also by some of the provisions contained in the above-mentioned draft decisions.

Article 17 of the Charter is also addressed by the action plan of the National Strategy on Children, with a reservation on paragraph "c". With reference to the strategic goals of the action plan, paragraph 1a of Article 17 is reflected in the following chapters: Right to social protection and inclusion, right to education, right to social care, right to legal assistance. Paragraph 1b is reflected in chapters: Right for protection from the violence, abuse and economic exploitation. Paragraph c is partly a competence of the Ministry of Labor, Social Affairs and Equal Opportunities, and partly of Ministry of Education and of the local government units, in particular with regard to the problems related to orphans leaving their residential institutions once they have reached their 16th year of age. Paragraph 2 of Article 17 is addressed by the chapter addressing

the right to education. The draft action plan of the strategy will be soon presented for approval to the Council of Ministers.

The social rights of children and young people are protected in the framework of the social insurance legislation, which considers children and students as economically non-active, hence their social insurance contributions are paid by the state. They are considered as having the status of an insured person. In this context, they are entitled to free of charge hospital services and primary health care services from all institutions that are contracted by the Institute of Health Care Insurance. They are also entitled to the co-financing for unical tertiary examinations and for nuclear medicine examinations.

Taking into account the above considerations the Albanian authorities maintain that the conditions for Albania to accept this article are met.

*Opinion of the Committee:*

Article 17§1

Article 17§1 integrates into the Charter rights which are guaranteed by the UN Convention on the Rights of the Child, and Article 17 is interpreted in light of the UN Convention on the Rights of the Child.<sup>155</sup> <sup>156</sup> The Committee has concentrated its examinations of national situations on the following issues:

- The legal status of the child;
- The right to education;
- Children in public care;
- Protection of children from violence, ill-treatment and abuse;
- Young offenders.
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Moreover, the Committee stated that Article 17 protects the right of children and young persons, including unaccompanied children to care and assistance which includes medical assistance.<sup>157</sup>

The legal status of the child

Article 17 of the Charter permits no discrimination between children born outside of marriage, and children born within marriage, e.g. in respect of maintenance

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<sup>155</sup> Conclusions XV-2, Statement of Interpretation on Article 17, p. 26.

<sup>156</sup> World Organisation against Torture (OMCT) v. Ireland, Complaint No. 18/2003, Decision on the merits of 7 December 2004, §61-63

<sup>157</sup> International federation of Human rights Leagues (FIDH) v. France, Complaint No. 14/2003, Decision on the merits of 5 September 2003, §36.

obligations and inheritance rights.<sup>158</sup> Article 17 guarantees the right of a child to know in principle, his or her origins. The Committee examines the procedures available for the establishment of maternity and paternity and, in particular, the situations where the establishment of maternity or paternity is not possible and where the right of a child to know his or her origins is restricted.<sup>159</sup> As regards minimum age for marriage, questions have been raised where there is a difference in the minimum age for marriage for males and females, on the grounds that this may be discriminatory and where the age is low for females this may not adequately protect them.<sup>160</sup>

### The right to education

Every child has the right to education. Both §1 and §2 of Article 17 require states to establish and maintain an education system that is both accessible and effective. In order for there to be an accessible and effective system of education there must be *inter alia* a functioning system of primary and secondary education; which includes an adequate number of schools fairly distributed over the geographical area (in particular between rural and urban areas). The number of children enrolled in school should reach 100% of those of the relevant age. Class sizes and the teacher pupil ratio must be reasonable. A mechanism to monitor the quality of education delivered and to ensure a high quality of teaching is also required. Education must be compulsory until the minimum age for admission to employment.<sup>161</sup>

Equal access to education must be ensured for all children, in this respect particular attention should be paid to vulnerable groups such as children from minorities, children seeking asylum, refugee children, children in hospital, children in care, pregnant teenagers, teenage mothers, children deprived of their liberty, etc. Children belonging to these groups must be integrated into mainstream educational facilities and ordinary educational schemes. Where necessary special measures should be taken to ensure equal access to education for these children. However, special measures for Roma children should not involve the establishment of separate schools or classes reserved for this group.<sup>162</sup> The right of children with disabilities to education is part of Article 17. However, in respect of States having accepted Article 17 and Article 15 is examined under Article 15§1.<sup>163</sup>

### Children in public care

Any restriction or limitation of parents custodial rights should be based on criteria laid down in legislation, and should not go beyond what is necessary for the protection and best interest of the child and the rehabilitation of the family.<sup>164</sup> The long term care of children outside their home should take place primarily in foster families suitable for

<sup>158</sup> Conclusions XVII-2, Malta, p. 567.

<sup>159</sup> Conclusions 2003, France, p. 173.

<sup>160</sup> Conclusions 2003, France, p. 173.

<sup>161</sup> Conclusions 2003, Statement of interpretation on Article 17, for example France, p. 174.

<sup>162</sup> Conclusions 2003, Slovenia, p. 511.

<sup>163</sup> Conclusions 2003, Bulgaria, p. 66.

<sup>164</sup> Conclusions XV-2, Statement of Interpretation on Article 17§1, p. 29.

their upbringing and only if necessary in institutions.<sup>165</sup> Children placed in institutions are entitled to the highest degree of satisfaction of their emotional needs and physical well being as well as to special protection and assistance. Such institutions must provide conditions promoting all aspects of children's growth. A unit in a child welfare institution should be of such a size as to resemble the home environment and should not therefore accommodate, not more than 10 children.<sup>166</sup>

Fundamental rights and freedoms such as the right to integrity, privacy, property and to meet with persons close to the child must be adequately guaranteed for children living in institutions.<sup>167</sup> National law must provide a possibility to lodge an appeal against a decision to restrict parental rights, to take a child into public care or to restrict the right of access of the child's closest family.<sup>168</sup> Furthermore, a procedure must exist for complaining about the care and treatment in institutions. There must be adequate supervision of the child welfare system and in particular of the institutions involved.<sup>169</sup>

#### Protection of children from violence, ill-treatment and abuse

To comply with Article 17, states' domestic law must prohibit and penalise all forms of violence against children, that is acts or behaviour likely to affect the physical integrity, dignity, development or psychological well being of children. The relevant provisions must be sufficiently clear, binding and precise, so as to preclude the courts from refusing to apply them to violence against children. Moreover, states must act with due diligence to ensure that such violence is eliminated in practice.<sup>170</sup>

The prohibition of violence and all other forms of degrading punishment or treatment of children must be accompanied by adequate sanctions in penal or civil law. There must be agencies and services designed to protect and prevent the ill-treatment of children.

#### Young offenders

The age of criminal responsibility must not be too low.<sup>171</sup> The criminal procedure relating to children and young persons must be adapted to their age and proceedings involving minors must be conducted rapidly. Minors should only exceptionally be detained pending trial for serious offences, for short periods of time and should in such cases be separated from adults. Prison sentences should only exceptionally be imposed on young offenders. They should only be for a short duration and the length

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<sup>165</sup> Conclusions XV-2, Statement of Interpretation on Article 17§1, p. 30.

<sup>166</sup> Conclusions 2005, Moldova, p. 474.

<sup>167</sup> Conclusions XV-2, Statement of Interpretation on Article 17§1, p. 31.

<sup>168</sup> Conclusions XV-2, Statement of Interpretation on Article 17§1, p. 31.

<sup>169</sup> Conclusions 2005, Lithuania, p. 370.

<sup>170</sup> World Organisation against Torture (OMCT) v. Portugal, Complaint 34/2006, Decision on the merits of 5 December 2006, §19-21.

<sup>171</sup> Conclusions XVII-2, Malta, p. 795.

of sentence must be laid down by a court. Young offenders should not serve their sentence together with adult prisoners.<sup>172 173</sup>

#### Article 17§2

According to Article 17§2, primary and secondary education must be free of charge. This covers the basic education system. In addition, hidden costs such as books or uniforms must be reasonable and assistance must be available to limit their impact on the most vulnerable groups. Measures must be taken to encourage school attendance and to actively reduce the number of children dropping out or not completing compulsory education and the rate of absenteeism.<sup>174</sup>

The Committee considers that Albania could accept Article 17§§1 and 2.

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<sup>172</sup> Conclusions XV-2, Statement of Interpretation on Article 17§1, p. 32.

<sup>173</sup> Conclusions XVII-2, Statement of Interpretation on Article 17§1, Turkey, p. 795.

<sup>174</sup> Conclusions 2005, Bulgaria, pp. 42-43.

## Article 18§§1-4

### *Situation in Albania:*

The new law No. 9959 dated 17.7.2008, "On the foreigners", fulfills the standards with regard to the effective enjoyment of the rights of migrant workers and their families to engage in gainful occupation in the territory of other parties. It enables for the application of the actual regulations in a liberal spirit, including the possibility for foreign workers to work in Albania, and the possibility for Albanians to engage in gainful occupation outside the country.

With regard to the Charter's provisions concerning the citizens from third countries legally entering Albania, based on the health insurance legislation, the category of refugees is included in the obligatory health insurance scheme, as an economically inactive category. Hence their health insurance is paid by the state, and they benefit from the social service scheme on equal terms with those contributing to it.

The non-working spouses of the foreign citizens resident in Albania (who don't contribute to the scheme, even though their working spouse does regularly contribute to it) are not entitled to the benefits arising from the obligatory health insurance scheme. In the legislation of the European countries, this provision applies based on the benefits of the family members. In this context, the definition « family member and family-related benefits» is not applied in the Albanian scheme, since based on the Albanian legislation on obligatory health insurance, the insurance scheme is personal, hence it relates to the person contributing to it, and not to his/her family members.

Taking into account the above considerations we maintain that the Charter's provision on engaging in a gainful occupation in the territory of other parties is acceptable for Albania.

### *Opinion of the Committee:*

#### Article 18§1

Article 18 applies to employees and the self-employed who are nationals of States party to the Charter. It also covers members of their family allowed into the country for the purposes of family reunion.<sup>175</sup> Article 18 relates not only to workers already on the territory of the State concerned, but also to workers outside the country applying for a permit to work on the territory.<sup>176</sup> This article also covers foreign workers who have

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<sup>175</sup> Conclusions X-2, Austria, p. 137.

<sup>176</sup> Conclusions XIII-1, Sweden, p. 204.



obtained employment in a foreign country but subsequently lose it.<sup>177</sup> The Committee's assessment of the degree of liberality used in applying existing regulations is based on figures showing the refusal rates for work permits. To this end, the figures supplied must be broken down by country and must also distinguish between first-time applications and renewal applications.<sup>178</sup>

#### Article 18§2

Formalities and dues and other charges are one of the aspects of regulations governing the employment of workers also covered by paragraph 3 but are dealt with specifically under this provision.<sup>179</sup> With regard to the formalities to be completed, conformity with Article 18§2 presupposes the possibility of completing such formalities in the country of destination as well as in the country of origin<sup>180</sup> and obtaining the residence and work permits at the same time and through a single application.<sup>181</sup> It also implies that the documents required (residence/work permits) will be delivered within a reasonable time.<sup>182</sup> Chancery dues and other charges for the permits in question must not be excessive and, in any event, must not exceed the administrative cost incurred in issuing them.<sup>183</sup>

#### Article 18§3

Under Article 18§3, States are required to liberalise periodically the regulations governing the employment of foreign workers in the following areas:

– Access to the national labour market

The conditions laid down for access by foreign workers to the national labour market must not be excessively restrictive, in particular with regard to the geographical area in which the occupation can be carried out and the requirements to be met.<sup>184</sup> States parties may make foreign nationals' access to employment on their territory subject to possession of a work permit but they cannot ban nationals of States Parties, in general, from occupying jobs for reasons other than those set out in Article G of the Charter. The only jobs from which foreigners may be banned therefore are those that are inherently connected with the protection of the public interest or national security and involve the exercise of public authority.

– Right to engage in an occupation:

<sup>177</sup> Conclusions II, Denmark, Germany, Ireland, Italy, United Kingdom, p. 61.

<sup>178</sup> Conclusions XVII-2, Spain, p. 747.

<sup>179</sup> Conclusions IX-1, United Kingdom, p. 102.

<sup>179</sup> Conclusions IX-1, United Kingdom, p. 102.

<sup>180</sup> Conclusions XVII-2, Finland, p. 243.

<sup>181</sup> Conclusions XVII-2, Germany, pp. 285-286.

<sup>182</sup> Conclusions XVII-2, Portugal, pp. 702-703.

<sup>183</sup> Conclusions XVII-2, Portugal, p. 703.

<sup>184</sup> Conclusions V, Germany, p. 119.

A person who has been legally resident for a given length of time on the territory of another Party should be able to enjoy the same rights as nationals of that country. The restrictions initially imposed with regard to access to employment (which can be accepted only if they are not excessive) must therefore be gradually lifted.<sup>185</sup>

– Rights in the event of loss of employment

Loss of employment must not lead to the cancellation of the residence permit, thereby obliging the worker to leave the country as soon as possible. In such cases, Article 18 requires extension of the validity of the residence permit to provide sufficient time for a new job to be found.<sup>186</sup>

Article 18§4

The only permitted restrictions are those provided for in Article G of the Charter, i.e. those which are “prescribed by law and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health, or morals.”<sup>187 188</sup>

The Committee considers that Albania could accept Article 18§§1-4.

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<sup>185</sup> Conclusions II, Statement of Interpretation on Article 18§3, p. 60.

<sup>186</sup> Conclusions XVII-2, Finland, p. 247.

<sup>187</sup> Conclusions XI-1, Netherlands, p. 155.

<sup>188</sup> Conclusions 2005, Cyprus, p. 105.

## Article 23

### *Situation in Albania:*

Improvement of social cohesion and generation of funds for vulnerable groups in general, and elderly persons in particular, remains one of the main priorities for the Government of Albania. Pursuant to the National Strategy for Development and Integration 2007-2013, the Sectorial Strategy for Social Protection and the Intersectorial Strategy for Social Inclusion entail the Inter-sectorial Policy Document for the Third Age and its Action Plan 2009-2013, which aim at enabling elderly people to live with dignity in their community and to be able to rely on well-coordinated financial resources at the local and central level.

The Ministry of Labor, Social Affairs and Equal Opportunities is the institution responsible for implementing the above-mentioned strategies in cooperation with other state and non-state actors. Policies for the elderly involve economic, social and demographic factors. The Social Protection Strategy aims at providing for normal social and medical conditions for the elderly. The idea behind it is to establish a network of services able to minimize the negative aspect of social phenomena, and to provide for adequate conditions for their reintegration into normal life. The two main priorities of the social protection policies for the third age is the decentralization of social services, and deinstitutionalization, which are laid out as follows:

### Decentralization

Pursuant to the decentralization law, the decentralization process has been completed. In total, 17 residential service centers and service centers have been transferred to the local government. In this context, local governments have taken over new responsibilities for the administration of the social care institutions. More concretely, the transferred institutions dealing with the third age are the following :

- Houses for the elderly in Kavaja, Gjirokastra, Shkodra, Fier

### Deinstitutionalization

In principle deinstitutionalization means the transfer from residential social services to community-based services. The process is based on four pillars:

- Prevention of futile enrollments in residential institutions
- Provision of alternatives for the accommodation, treatment, education, and rehabilitation of those individuals, whose enrollment in residential centers is not necessary.

- Improvement of the service conditions for those necessitating residential centre services.

The drafting and the implementation of social care programs for children, PWD and elderly has improved the quality of services and of the staff, who are now in a better position to monitor the services provided by the public and private social care institutions.

#### Institutionalization of the relations with the civil society

The civil society organizations are by now partners of the public structures. They contribute as social service providers. The Ministry of Labor, Social Affairs and Equal Opportunities works for the institutionalization of the cooperation with them. The cooperation with the NGOs, which represent the largest group of non-public social service providers is supported by the legislation in force.

The improvement of the legal framework for the licensing of the NGOs as social service providers, the procedures for the licensing for NGOs have been simplified. The newly created National Licensing Centre as the institution directly responsible for issuing licenses has further facilitated the process.

The NGO network providing residential social services and daily services has been continuously consolidated. It has shown a capacity to be sustainable, also thanks to the system for the monitoring and standards of social services from the Social Services Inspectorate.

#### Social Service Institutions providing services for the elderly:

The main objectives of the social care institutions dealing with elderly are the following:

- Provision of psycho-social services (counseling, group work, cultural and entertainment activities)
- Provision of health services (medical check-ups, vaccination, etc)
- Support services (accommodation, daily care, provision of clothing, food etc)

The map of the public institutions providing services for the third age is the following:

- 6 residential institutions with 275 elderly beneficiaries in Tirana, Gjirokastra, Shkodra, Kavaja, Polican, Fier
- 2 daily care centers for 90 elderly beneficiaries in Saranda and Kamez.

The NGOs operating under the licenses provided by the Ministry of Labor, Social Affairs and Equal Opportunities and by the National Licensing Centre are 19 in total, providing following services for the elderly divided by the type of service:

- 5 daily centers for elderly providing services for 279 elderly under the authority of the local governments of Tirana, Durres, Shkodra
- 6 non-public residential centers providing services for 116 elderly in Tirana, Shkodra, Durres.
- 8 community-based and alternative social services reaching out to 1005 elderly in Pogradec, Gjirokaster and Elbasan.

The number of the NGOs providing services for the elderly is growing. From the year 2005 to the year 2009, they have grown by 30%. More daily services and better quality of service is being provided thanks to the implementation of the social service standards approved by the Government of Albania.

Based on the policy document on the third age, the Ministry of Labor, Social Affairs and Equal Opportunities has established a working group that is revising the draft law on the third age. Once the law is approved, following guarantees are given by the Government:

- More dignity for the elderly in their families and in the community through a better integration of the services for them
- Better fulfillment of their needs through more programs and budgets for them at the central and local level
- More information and coordination of awareness-raising activities on the importance of solidarity and assistance for the elderly. Provision of assistance for the organizations working in this field to facilitate the implementation of the policies in favor of the third age.
- More research and development programs, new models for the improvement of the quality of life of the elderly, more health and social services and a better dissemination of the best practices of community services for the elderly.

*Opinion of the Committee:*

Article 23 of the Charter is the first human rights treaty provision to specifically protect the rights of the elderly. The measures envisaged by this provision, by their objectives as much as by the means of implementing them, paragraph towards a new and progressive notion of what life should be for elderly persons, obliging the Parties to devise and carry out coherent actions in the different areas covered. It is a dynamic provision in the sense that “the appropriate measures it calls for may change over time in line with a new and progressive notion of what life should be for elderly

persons.<sup>189</sup> Article 23 overlaps with other provisions of the Charter which protect elderly persons as members of the general population, such as Article 11 (Right to protection of health), Article 13 (Right to social and medical assistance) and Article 12 (Right to social security). Article 23 requires states to make focused and planned provision in accordance with the specific needs of elderly persons.

One of the primary objectives of Article 23 is to enable elderly persons to remain full members of society. The expression “full members” means that elderly persons must suffer no ostracism on account of their age. The right to take part in society’s various fields of activity should be granted to everyone active or retired, living in an institution or not. The effects of restrictions to the legal capacity should be limited to the purpose of the measure. On a general level, the Committee has examined national policies for the elderly and the level and development of national expenditure for social protection and services for the elderly, as well as measures to allow/encourage elderly persons to remain in the labour force.<sup>190</sup> Non-discrimination legislation (or similar legislation) should exist at least in certain domains protecting persons against discrimination on grounds of age.<sup>191</sup> Elderly persons at times may have reduced capacity making powers or no such powers or capacity at all. Therefore, there should exist a procedure for ‘assisted decision making’ for the elderly.<sup>192</sup>

The primary focus of the right to adequate resources is on pensions. Pensions and other state benefits must be sufficient in order to allow elderly persons to lead a ‘decent life’ and play an active part in public, social and cultural life. The Committee compares pensions with the average wage levels and the overall cost of living. Pensions must be index-linked.<sup>193</sup> The Committee also takes into consideration the cost of transport as well as the cost of medical care and medicine, as well as the existence of a carer’s allowance for family members looking after an elderly relative. Although Article 23§1b only refers to the provision of information about services and facilities, the Committee considers that 1§b of Article 23 presupposes the existence of services and facilities and that elderly persons have the right to certain services and facilities. Therefore, the Committee examines not only information relating to the provision of information about these services and facilities but also these services and facilities themselves. In particular, information is required on the existence, extent and cost of home help services, community based services, specialised day care provision for persons with dementia and related illnesses and services such as information, training and respite care for families caring for elderly persons, in particular, highly dependent persons, as well as cultural leisure and educational facilities available to elderly persons.<sup>194 195</sup>

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<sup>189</sup> Conclusions XIII-5, Statement of Interpretation on Article 23, p. 455.

<sup>190</sup> Conclusions XIII-5, Finland, p. 305

<sup>191</sup> Conclusions 2003, France, p. 186.

<sup>192</sup> Conclusions 2003, France, p. 186.

<sup>193</sup> Conclusions 2003, France, p. 186.

<sup>194</sup> Conclusions 2003, France, p. 186.

<sup>195</sup> Conclusions 2005, Slovenia, p. 659.

The needs of elderly persons must be taken into account in national or local housing policies. The supply of adequate of appropriate housing for elderly person must be sufficient. Housing law and policy must take account of the special needs of this group. Policies should help elderly persons to remain in their own homes for as long as possible through the provision of sheltered/supported housing and assistance for the adaptation of homes.<sup>196</sup>

In the context of a right to adequate health care for elderly persons Article 23 requires that health care programmes and services (in particular primary health care services including domiciliary nursing/health care services) specifically aimed at the elderly must exist together with guidelines on healthcare for elderly persons. In addition, there should be mental health programmes for any psychological problems in respect of the elderly, and adequate palliative care services.<sup>197</sup>

The final part of Article 23 deals with the rights of elderly persons living in institutions. In this context, it provides that the following rights must be guaranteed; the right to appropriate care and adequate services, the right to privacy, the right to personal dignity, the right to participate in decisions concerning the living conditions in the institution, the protection of property, the right to maintain personal contact with persons close to the elderly person and the right to complain about treatment and care in institutions.<sup>198 199</sup>

There should be a sufficient supply of institutional facilities for elderly persons (public or private), care in such institutions should be affordable and assistance must be available to cover the cost. All institutions should be licensed, subject to a declaration regime, to inspection or to any other mechanism which ensures, in particular, that the quality of care delivered is adequate.<sup>200</sup> Issues such as the requirements of staff qualifications, staff training and the wage levels of staff, compulsory placement, social and cultural amenities and the use of physical restraints are also examined under this provision.<sup>201</sup>

The Committee considers that Albania may not meet the standards on adequate resources and provision of housing for the elderly as required under Article 23.

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<sup>196</sup> Conclusions 2003, Slovenia, p. 530.

<sup>197</sup> Conclusions 2003, France, p. 189.

<sup>198</sup> Conclusions 2003, Slovenia, p. 530.

<sup>199</sup> Conclusions 2005, Slovenia, p. 659.

<sup>200</sup> Conclusions 2005, Slovenia, p. 659.

<sup>201</sup> Conclusions 2003, Slovenia, p. 530.

## Article 27§§1-3

### *Situation in Albania:*

Article 27, paragraph 1/b of the Charter is reflected in Law 7703 dated 11.05.1993 “On the social insurance in the Republic of Albania” amended. Article 2 of the above-mentioned law provides that social security is obligatory, and has a protective social role towards:

#### a) Employees with regard to:

- Temporary disability to work because of illness
- Pregnancy
- Third age, disability, loss of the head of the family
- Job-related injuries and diseases
- Unemployment

#### b) Other economically active persons (employers and self-employed) with regard to:

- Pregnancy
- Third age, disability, loss of the head of the family

The payment of the social insurance guarantee the compensation of the decrease of income for the purpose of ensuring a minimal life standard, that is set by the Council of Ministers. If considered appropriate, in-kind benefits may be also provided, inline with the regulation of the Social Insurance Institute.

Article 6 provides that “Social Insurance protect necessarily all economically active citizens in Albania, that is, also in case of the decrease of their income as a result of pregnancy, old age, disability, or loss of the head of the family.

The social insurance system also protect all those employed in case their income decreases as a result of the temporary inability to work because of disease, job-related injury, or unemployment.

The Council of Ministers may decide to enlarge the scope of the social protection provided by the scheme, or to specify exceptions in the case of:

- a) Temporary or seasonal employees
- b) Self-employed in the agricultural sector;
- c) Unpaid workers of the families of the self-employed persons;



- ç) Interns and students for the duration of the internship/course that are insured only against job-related injuries from the employer.

Article 27, paragraph 2 of the Charter is supported by Law 7703.

Chapter II, articles 26, 27, 28, and 29 of Law 7703, provides benefits for the pregnancy:

#### Article 26

The payable insurance for the paid pregnancy leave consists of:

- a) income for the pregnancy period
- b) compensation for the pregnancy, in case the job position changes because of it
- c) childbirth reward

#### Article 27

Income for the pregnancy period

1. The income during the period of pregnancy is paid to the insured women if she has been insured for at least 12 months, except for the case the woman is entitled to another pregnancy benefit.

2. The income shall be granted for 365 calendar days, including a minimum of 35 days before the birth date and a minimum of 42 days after the birth date. If the women is pregnant with more than one child, the income shall be granted for 390 calendar days, including a minimum of 60 days before and 42 days after the birth of the children.

3. The pregnancy income for the insured women amounts to:

- 80% of the average daily baseline income of the last calendar year for the pre-birth period and for 150 calendar days after the childbirth.

- 50% of the average daily baseline income of the last calendar year for the remaining period.

4. The pregnancy income for economically active women is equal to the basic element of the retirement pension.

5. The mother who adopts a child up to 1 years old, is entitled to post-pregnancy leave, provided that she has been insured for not less than 12 months. This leave commences on the day of adoption, not earlier than the 42<sup>nd</sup> day after the birth of the

adopted child, and it continues for not longer than 330 days from the day of the birth of the child. The minimum number of leave days for the adoptive mother is 28 days.

6. If a child is adopted during the pregnancy leave, the mother who has given birth to the child is entitled to an income until the day of adoption, for not less than 42 days after giving birth.

#### Article 28

Compensations for the change of the job position because the pregnancy

1.If an insured woman has to change her job position on the basis of the relevant medical commission decision because of her pregnancy, she is entitled to compensation for the missing revenue. This compensation is awarded if the woman has been insured for not less than 12 months.

2.The compensation amount is equal to the difference between the income from the new workplace with the old. It cannot exceed 50% of the average baseline daily payment of the last calendar year.

#### Article 29

Childbirth reward

1.The mother or father of a newborn child is entitled to the childbirth reward, provided that one of them has contributed for at least 1 year to the social security scheme. The reward is payable only once and the mother will be considered as a priority for receiving this benefit in case she is insured.

2. The reward for every childbirth shall be equal to 50 percent of the minimum monthly wage.

Considering the above presentation, paragraph 2 of Article 29 is acceptable to us.

*Opinion of the Committee:*

#### Article 27§1

Under Article 27§1a of the Charter States should provide people with family responsibilities with equal opportunities in respect of entering, remaining and re-entering employment since these persons may face difficulties on the labour market due to their family responsibilities. Therefore, measures need to be taken by States to ensure that workers with family responsibilities are not discriminated against due to these responsibilities and to assist them to remain, enter and re-enter the labour

market, in particular in the field of vocational guidance, training and re-training.<sup>202</sup> Actions must be taken to promote training aimed at facilitating the remaining and the reintegration of workers with family responsibilities in the employment market. However, when the quality of standard employment services is adequate, there is no need to provide extra services for people with family responsibilities.<sup>203</sup> States should pay particular attention to the problem of unemployment of part-time workers.

The aim of Article 27§1b is to take into account the needs of workers with family responsibilities in terms of conditions of employment and social security. Measures need to be taken concerning the length and organisation of working time. Furthermore, workers with family responsibilities should be allowed to work part-time or to return to full-time employment.<sup>204</sup> These measures should apply equally to men and women.<sup>205</sup> The type of measures cannot be defined unilaterally by the employer but should be provided by a binding text (legislation or collective agreement). Periods of unemployment due to family responsibilities should be taken into account in the calculation of pension schemes or in the determination of pension rights. The kind of measures to be adopted shall not be decided unilaterally by the employer, but shall be defined with employees in collective agreements or other measures.

The aim of Article 27§1c is to develop or promote services, in particular child day care services and other childcare arrangements, available and accessible to workers with family responsibilities.<sup>206</sup> Where a State has accepted Article 16, childcare arrangements are dealt with under that provision. In any event, under Article 27§1 parents should be allowed to reduce or cease work because of the serious illness of a child.<sup>207</sup>

### Article 27§§2, 3

Family responsibilities must not constitute a valid ground for termination of employment.<sup>208</sup> Workers dismissed on such illegal grounds must be afforded the same level of protection afforded in other cases of discriminatory dismissal under Article 1§2 of the Charter. In particular, courts or other competent bodies should be able to award a level of compensation that is sufficient both to deter the employer and proportionate the damage suffered by the victim. Therefore limits to levels of compensation that may be awarded are therefore not in conformity with the Charter.<sup>209</sup>

<sup>202</sup> Conclusions 2005, Statement of Interpretation on Article 27§1a; see for example Estonia p. 213.

<sup>203</sup> Conclusions 2003, Sweden, p. 637.

<sup>204</sup> Conclusions 2005, Statement of Interpretation on Article 27§1b; see for example Estonia p. 213.

<sup>205</sup> Conclusions 2005, Lithuania, p. 397.

<sup>206</sup> Conclusions 2005, Statement of Interpretation on Article 27§1c ; see for example Estonia, p. 215.

<sup>207</sup> Conclusions 2005, Norway, p. 578.

<sup>208</sup> Conclusions 2003, Statement of Interpretation on Article 27§3 ; see for example Bulgaria, p. 89.

<sup>209</sup> Conclusions 2005, Estonia, p. 217.

The Committee considers that Albania could accept Article 27§§1-3.

## Article 30

### *Situation in Albania:*

For the purpose of providing for an effective enjoyment of the right of protection against poverty and social exclusion, the parties engage to:

- a) Take measures within a comprehensive and well-coordinated effort to promote an effective access to employment, housing, training, education, culture and social and medical assistance for people in danger of social exclusion and for their families.
- b) To review these measures as appropriate.

With regard to paragraph a, article 30, Law 9232, dated 13.05.2004, "On social housing programs for the inhabitants of urban areas" amended, provides for benefits for vulnerable groups, such as PWD, orphans, widows or divorced women, families with one deceased parent, elderly people in retirement age etc.

With regard to paragraph b, article 30, the amended draft law 9232, which has been already submitted to the Parliament, women who are victims of domestic violence, the families of the policemen and policewomen fallen in duty, migrant workers and asylum-seekers have been included.

Furthermore, the draft law provides for specific instruments that aim at making housing for vulnerable groups more affordable. These instruments are listed below:

- a- Direct grants to PWD and orphans, aiming at funding 10% of the value of the apartment through state budget means.
- b- Small grants for projects submitted by the municipalities for the improvement of the housing conditions of the Roma community.
- c- Housing bonus, meaning the subvention of the rent of the apartments rented in the free market, that is granted to categories laid out in the law
- d- Rent subvention (for the apartments owned by the municipality) is awarded if the rent of the social housing apartment exceeds 25 percent of the net family income (there exist at present no rented social housing apartments).

### *Opinion of the Committee:*

Living in a situation of poverty and social exclusion violates the dignity of human beings.<sup>210</sup> Poverty means deprivation due to a lack of resources.<sup>211</sup> With a view to

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<sup>210</sup> Statement of Interpretation on Article 30, see in particular Conclusions 2003, France, p. 214.

ensuring the effective exercise of the right to protection against poverty and social exclusion, Article 30 requires States Parties to adopt an overall and coordinated approach, which should consist of an analytical framework, a set of priorities and measures to prevent and remove obstacles to access fundamental social rights. There should also exist monitoring mechanisms involving all relevant actors, including civil society and persons affected by poverty and exclusion.<sup>212</sup> This approach must link and integrate policies in a consistent way, moving beyond a purely sectoral or target group approach. The measures taken for such a purpose must promote and remove obstacles to access to fundamental social rights, in particular employment, housing, training, education, culture and social and medical assistance.<sup>213</sup> It should be noted that this is not an exhaustive list of the areas in which measures must be taken to address the multidimensional phenomena of poverty and social exclusion. The measures should strengthen access to social rights, their monitoring and enforcement, improve the procedures and management of benefits and services, improve information about social rights and related benefits and services, combat psychological and socio-cultural obstacles to accessing rights and where necessary specifically target the most vulnerable groups and regions.<sup>214</sup> Access to fundamental social rights is assessed by taking into consideration the effectiveness of policies, measures and actions undertaken.<sup>215</sup>

As long as poverty and social exclusion persist, alongside the measures there should also be an increase in the resources deployed to make social rights possible. Adequate resources are one of the main elements of the overall strategy to fight social exclusion and poverty, and should consequently be allocated to attain the objectives of the strategy.<sup>216</sup> Moreover, adequate resources are an essential element to enable people to become self-sufficient. Finally, the measures should be adequate in their quality and quantity to the nature and extent of poverty and social exclusion in the country concerned.<sup>217</sup> In this respect the definitions and measuring methodologies applied at the national level and the main data made available are systematically reviewed. The at-risk-of-poverty rate before and after social transfers (Eurostat), is used as a comparative value to assess national situations.

The Committee considers that there is a legal framework in place. However at the present moment Albania may not meet the standards as to the overall and coordinated approach and adequacy of measures in their quality and quantity to the nature and extent of poverty and social exclusion, as required under Article 30.

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<sup>211</sup> Statement of Interpretation on Article 30, see in particular Conclusions 2005, France, p. 261.

<sup>212</sup> Statement of Interpretation on Article 30, see in particular Conclusions 2003, France, p. 214.

<sup>213</sup> Statement of Interpretation on Article 30, see in particular Conclusions 2003, France, p. 214.

<sup>214</sup> Statement of Interpretation on Article 30, see in particular Conclusions 2003, France, p. 214.

<sup>215</sup> Conclusions 2005, Norway, p. 580.

<sup>216</sup> Conclusions 2005, Slovenia, p. 674.

<sup>217</sup> Statement of Interpretation on Article 30, see in particular Conclusions 2003, France, p. 214.

## **Article 31 Right to housing**

### *Situation in Albania:*

In order to provide an effective enjoyment of the right to housing, the parties engage to take measures aiming at:

1. Encourage access to housing of an adequate standard
2. Lower the number of homeless families
3. Promote affordable housing for low-income families.

Article 59 of the Constitution of the Republic of Albania counts sufficient and adequate housing among the country's social objectives. It stipulates the following: "The state, within its constitutional competencies and available means, and in conjunction to the private initiative and responsibility, aims at fulfilling the needs of its citizens for housing.

The fulfillment of the social objectives cannot be directly asked for in the courts of right. The law sets out the conditions and the limits within which their fulfillment might be claimed."

1. The promotion of affordable and suitable housing is aimed through social housing programs provided pursuant to law 9232 and its sub legal acts, to the benefit of the following groups:

- a. Families, where the head of family is a widowed or divorced woman
- b. Families with one parent, with children
- c. Elderly people in the retirement age who are not housed in residential social care facilities
- d. People with disabilities who have the status of blind person of the first category, paraplegics or tetraplegic, labor invalids and war invalids
- e. Families with many children
- f. Young couples with a combined age up to 55 years
- g. Families that have changed residence for the purpose of finding employment
- h. Individuals with the status of orphans who have left their orphanages or care centers until 30 years old

The obligatory construction standards are based on Council of Ministers' Decree 68 dated 15.2.2001 "On the approval of the technical design standards and standards of implementation of construction works". Another relevant piece of legislation is Council of Ministers' Decree 814 dated 3.12.2004 "On construction standards for families eligible for the social housing programs".

The government seeks to lower the number of families in need for social housing through the social housing alternatives provided by the law as follows:

- a. Low-cost housing;
- b. Rented social houses;
- c. Construction of infrastructure

3. With regard to paragraph 3, article 31 of the Social Charter aiming at “making the price of houses accessible for families with insufficient financial means”, on the basis of Law 9232, following programs are currently being implemented:

- Government subvention covering the interest of the loans for low-cost housing.
- Rented social housing, where the rent is lower than the market prices.

The amended draft law 9232, which has been already submitted to the Parliament, women who are victims of domestic violence, the families of the policemen and policewomen fallen in duty, migrant workers and asylum-seekers have been included. Furthermore, the draft law provides for specific instruments that aim at making housing for vulnerable groups more affordable. These instruments are listed below:

- a- Direct grants to PWD and orphans, aiming at funding 10% of the value of the apartment through state budget means.
- b- Small grants for projects submitted by the municipalities for the improvement of the housing conditions of the Roma community.
- c- Housing bonus, meaning the subvention of the rent of the apartments rented in the free market, that is granted to categories laid out in the law
- d- Rent subvention (for the apartments owned by the municipality) is awarded if the rent of the social housing apartment exceeds 25 percent of the net family income (there exist at present no rented social housing apartments).

In total, until now some 1400 families have been housed in low-cost premises. It is expected that 1100 additional families will be housed in apartments with social rent.

These costs have been included in the annual state budget, in accordance with the below table:



*Opinion of the Committee:*

## Article 31§1

## Definition and Material scope

States must guarantee to everyone the right to adequate housing.<sup>218</sup> They should promote access to housing in particular to the different groups of vulnerable persons, such as low-income persons, unemployed persons, single parent households, young persons, persons with disabilities including those with mental health problems.<sup>219</sup>

The notion of adequate housing must be defined in law. “Adequate housing” means:

1. a dwelling which is safe from a sanitary and health paragraph of view, i.e. that possesses all basic amenities, such as water, heating, waste disposal, sanitation facilities, electricity, etc and where specific dangers such as the presence of lead or asbestos are under control;
2. a dwelling which is not over-crowded, that the size of the dwelling must be suitable in light of the number of persons and the composition of the household in residence,
3. a dwelling with secure tenure supported by the law. This issue is covered by Article 31§2.<sup>220</sup>

The definition of adequate housing must be applied not only to new constructions, but also gradually to the existing housing stock. It must also be applied to housing available for rent as well as to housing owner occupied housing.<sup>221</sup>

## Effectiveness

It is incumbent on the public authorities to ensure that housing is adequate through different measures such as, in particular, an inventory of the housing stock, injunctions against owners who disregard obligations, urban development rules and maintenance obligations for landlords. Public authorities must also limit against the interruption of essential services such as water, electricity and telephone.<sup>222</sup> Even if under domestic law, local or regional authorities, trade unions or professional organisations are responsible for exercising a particular function, States parties to the Charter are responsible, under their international obligations to ensure that such responsibilities

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<sup>218</sup> Conclusions 2003, France, p. 221.

<sup>219</sup> Conclusions 2003, Italy, p. 342.

<sup>220</sup> Conclusions 2003, France, p. 221.

<sup>221</sup> Conclusions 2003, France, p. 221.

<sup>222</sup> Conclusions 2003, France, p. 224.

are properly exercised. Thus, ultimate responsibility for policy implementation, involving at a minimum supervision and regulation of local action, lies with the Government which must be able to show that both local authorities and itself have taken practical steps to ensure that local action is effective.<sup>223 224</sup>

## Legal protection

The effectiveness of the right to adequate housing requires its legal protection through adequate procedural safeguards. Occupiers must have access to affordable and impartial legal and non-legal remedies.<sup>225</sup> Any appeal procedure must be effective.<sup>226</sup>

## Article 31§2

### Definition

Homeless persons are those persons who legally do not have at their disposal a dwelling or other form of adequate housing in the terms of Article 31§1.<sup>227</sup>

### Prevention

States must take action to prevent categories of vulnerable people from becoming homeless. In addition to a housing policy for all disadvantaged groups of people to ensure access to social housing (cf. Article 31§3),<sup>228</sup> States must set up procedures to limit the risk of eviction. Though State authorities enjoy a wide margin of discretion in measures to be taken concerning town planning, they must strike a balance between the general interest and the fundamental rights of the individuals, in particular the right to housing and its corollary of ensuring individuals do not become homeless.<sup>229</sup> Forced eviction can be defined as the deprivation of housing which a person occupied due to insolvency or wrongful occupation.<sup>230</sup> Illegal occupation of a site or dwelling may justify the eviction of the illegal occupants. However, the criteria of illegal occupation must not be unduly wide. The eviction should be governed by rules of procedure sufficiently protective of the rights of the persons concerned and should be carried out according

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<sup>223</sup> European Roma Rights Center (ERRC) v. Italy, Complaint No. 27/2004, Decision on the merits of 7 December 2005, § 26.

<sup>224</sup> European Federation of National Organisations Working with the Homeless (FEANTSA) c. France, Complaint No 39/2006, decision on the merits of 5 December 2007, § 79.

<sup>225</sup> Conclusions 2003, France, p. 224.

<sup>226</sup> European Federation of National Organisations Working with the Homeless (FEANTSA) c. France, Complaint No 39/2006, decision on the merits of 5 December 2007, §§ 80-81.

<sup>227</sup> Conclusions 2003, Italy, p. 345.

<sup>228</sup> Conclusions 2005, Lithuania, p. 409.

<sup>229</sup> European Roma Rights Center (ERRC) v. Bulgaria, Complaint N° 31/2005, Decision on the merits of 18/10/2006, §54.

<sup>230</sup> Conclusions 2003, Sweden, p. 655.

to these rules.<sup>231</sup> Legal protection for persons threatened by eviction must include, in particular, an obligation to consult the parties affected in order to find alternative solutions to eviction and the obligation to fix a reasonable notice period before eviction. When evictions do take place, they must be carried out under conditions which respect the dignity of the persons concerned. The law must prohibit evictions carried out at night or during the winter period, When an eviction is justified by the public interest, authorities must adopt measures to re-house or financially assist the persons concerned.<sup>232</sup> Domestic law must provide legal remedies and offer legal aid to those who are in need of seeking redress from the courts. Compensation for illegal evictions must also be provided.

## Reduction

States must take measures in order to reduce homelessness with a view to eliminating it. Reducing homelessness requires the introduction of emergency measures, such as the provision of immediate shelter. There must be enough places<sup>233</sup> and the conditions in the shelters should be such as to enable living in keeping with human dignity<sup>234</sup>. The temporary supply of shelter, however adequate, cannot be considered satisfactory; Individuals who are homeless should be provided with adequate housing within a reasonable period. In addition, measures should be taken to help such people overcome their difficulties and to prevent them from returning to a situation of homelessness.<sup>235</sup>

## Article 31§3

An adequate supply of affordable housing must be ensured for persons with limited resources. Housing is affordable if the household can afford to pay initial costs (deposit, advance rent), current rent and/or other housing-related costs (e.g. utility, maintenance and management charges) on a long-term basis while still being able to maintain a minimum standard of living, according to the standards defined by the society in which the household is located.<sup>236</sup> States must:

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<sup>231</sup> European Roma Rights Center (ERRC) v. Greece, Complaint N° 15/2003, Decision on the merits of 8/12/2004, §51.

<sup>232</sup> European Roma Rights Center (ERRC) v. Bulgaria, Complaint N° 31/2005, Decision on the merits of 18/10/2006, §52.

<sup>233</sup> European Federation of National Organisations Working with the Homeless (FEANTSA) c. France, Complaint No 39/2006, decision on the merits of 5 December 2007, § 107.

<sup>234</sup> European Federation of National Organisations Working with the Homeless (FEANTSA) c. France, Complaint No 39/2006, decision on the merits of 5 December 2007, §§ 108-109.

<sup>235</sup> Conclusions 2003, Italy, p. 345.

<sup>236</sup> Conclusions 2003, Sweden, p. 655.

- adopt appropriate measures for the provision of housing, in particular social housing;<sup>237</sup> social housing should target, in particular, the most disadvantaged;<sup>238</sup>
- adopt measures to ensure that waiting periods for the allocation of housing are not excessive; legal and non-legal remedies must be available when waiting periods are excessive;<sup>239</sup>
- introduce housing benefits at least for low-income and disadvantaged sections of the population.<sup>240</sup> Housing benefit is an individual right: all qualifying households must receive it in practice; legal remedies must be available in case of refusal.<sup>241</sup>

All the rights thus provided must be guaranteed without discrimination, in particular as in respect of Roma or travellers.<sup>242</sup>

The Committee considers that Albania could accept Article 31§1. The Committee considers that although the legal framework is in place, Albania may not meet in practice the standards required under Article 31§§2 and 3.

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<sup>237</sup> Conclusions 2003, Sweden, p. 656.

<sup>238</sup> International Movement ATD Fourth World v. France, complaint n° 33/2006, decision on the merits of 5 December 2007, §§ 98-100.

<sup>239</sup> . International Movement ATD Fourth World v. France, complaint n° 33/2006, decision on the merits of 5 December 2007, § 131.

<sup>240</sup> Conclusions 2003, Sweden, p. 656.

<sup>241</sup> Conclusions 2005, Sweden, p. 734.

<sup>242</sup> International Movement ATD Fourth World v. France, complaint n° 33/2006, decision on the merits of 5 December 2007, §§ 149-155.

## **Additional Protocol of 1995 providing for a system of collective complaints**

### *Situation in Albania:*

Information provided during the meeting

The cooperation of the government with social actors is well-established and functioning. The Council of Education and Vocational Training is composed of representatives of the government, employers and employees. Also, the National Council for Protection of Children, National Council for Gender Equality, Social Security Institute and many others decision-making bodies in matters covered by the Social Charter encompass cooperation of government and social actors. The transparency is thus already achieved and the social actors are kept informed regularly about the measures adopted by the Government and other state institutions.

The Albanian participants considered that there was no technical obstacles to the acceptance of the procedure of complaints. Nonetheless, this could only be achieved if a political decision would be taken by the Government and the Parliament.

### *Opinion of the Committee:*

In view of the above, the Committee encourages Albania to accept the collective complaints procedure as provided by the Additional Protocol of 1995 to the Charter.

## APPENDIX 1

### ALBANIA AND THE EUROPEAN SOCIAL CHARTER

#### Situation of Albania as of June 2012

##### Ratifications

Albania ratified the Revised European Social Charter on 14/11/2002 and has accepted 64 of the Revised Charter's 98 paragraphs.

Albania has not yet signed the Additional Protocol providing for a system of collective complaints.

##### Table of Accepted Provisions

1.1	1.2	1.3	1.4	2.1	2.2	2.3	2.4	2.5	2.6	2.7	3.1
3.2	3.3	3.4	4.1	4.2	4.3	4.4	4.5	5	6.1	6.2	6.3
6.4	7.1	7.2	7.3	7.4	7.5	7.6	7.7	7.8	7.9	7.10	8.1
8.2	8.3	8.4	8.5	9	10.1	10.2	10.3	10.4	10.5	11.1	11.2
11.3	12.1	12.2	12.3	12.4	13.1	13.2	13.3	13.4	14.1	14.2	15.1
15.2	15.3	16	17.1	17.2	18.1	18.2	18.3	18.4	19.1	19.2	19.3
19.4	19.5	19.6	19.7	19.8	19.9	19.10	19.11	19.12	20	21	22
23	24	25	26.1	26.2	27.1	27.2	27.3	28	29	30	31.1
31.2	31.3										
Grey = Accepted provisions											

##### The Charter in domestic law

Automatic incorporation into domestic law based on Article 122 of the Constitution.

##### Reports \*

Between 2005 and 2011 Albania submitted 7 reports on the application of the Revised Charter.

The [6<sup>th</sup> report](#), submitted on 01/11/2010, concerns covers the accepted provisions of the Revised Charter related to Thematic Group 4 "Children, families, migrants" (Articles 7, 8 and 19 of the Revised Charter). Conclusions in respect of these provisions were published in January 2012.

Albania submitted its [7<sup>th</sup> report](#) on 28 October 2011 on accepted provisions of the Revised Charter related to Thematic Group 1, Employment, Training and Equal Opportunities, i.e

- the right to work (Article 1),
- the right of men and women to equal opportunities (Article 20),
- the right to protection in cases of termination of employment (Article 24),
- the right to workers to the protection of claims in the event of insolvency of the employer (Article 25).

Conclusions in respect of these provisions will be published in December 2012.

\* [Following a decision taken by the Committee of Ministers in 2006](#), the provisions of both the 1961 Charter and the Revised Charter have been divided into four thematic groups. States present a yearly report on the provisions relating to one of the four thematic groups. Consequently each provision of the Charter is reported on once every four years.

## **Situation of Albania with respect to the application of the Revised Charter**

### **Examples of progress achieved in the implementation of social rights under the Social Charter<sup>243</sup>**

#### **Thematic Group 1 “Employment, training and equal opportunities”**

- ▶ Law no. 9570 of 3 July 2006 amending the Employment Act defined the aim of employment policies and introduced the concept of access to public employment services.
- ▶ Law no. 9570 of 3 July 2006 amending the 1995 Employment Act defines the main aim of all employment policies and contain a clearer definition of concepts such as “jobseeker” and “employment services”.

#### **Thematic Group 2 “Health, social security and social protection”**

- ▶ The Decision of the Council of Ministers no. 762 of November 2003 obliges all enterprises employing more than 15 persons to have an occupational doctor.
- ▶ Law no. 9774 of 12 July 2007 on the evaluation and administration of noise in the environment was approved.
- ▶ Legislation has been adopted on safety of food products, health, animals, etc. in order to ensure national standards are consistent with EU ones.
- ▶ Law no. 9518 of 18 April 2006 on the protection of minors from alcohol use included measures to raise awareness among young people about alcohol-related problems.
- ▶ Law no. 9836 of 28 January 2008 created a National Food Authority.
- ▶ Law no. 9928 of 9 June 2008 established free stomatological care for children up to the age of 18.

#### **Thematic Group 3 “Labour rights”**

- ▶ Article 151§2 of the Labour Code sets an obligation of three-month notice for termination of fixed-term contracts between three and five years.
- ▶ Article 181 of the Labour Code provides for the protection of the trade union representatives and Article 202 provides for sanctions in case of violation of the rights provided for in Article 181.

#### **Thematic Group 4 “Children, families, migrants”**

- ▶ Law no. 9034 of 20 March 2003 on the Emigration of the Albanian Citizens for Employment Purposes punishes the spreading of false and unlawful information made for profitable purposes in the field of emigration.
- ▶ Article 108 of the Labour Code and the Decision of the Council of Ministers no. 397 of 20 May 1996 provide that pregnant women and breastfeeding mothers may not be obliged to start work before 5.00 am (in summer, 6.00 in winter) or work after 8.00 pm.

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<sup>243</sup> « 1. The [European Committee of Social Rights] rules on the conformity of the situation in States with the European Social Charter, the 1988 Additional Protocol and the Revised European Social Charter. 2. It adopts conclusions through the framework of the reporting procedure and decisions under the collective complaints procedure » (Article 2 of the Rules of the Committee).

## Cases of non-compliance

### Thematic Group 1 “Employment, training and equal opportunities”

► *Article 24 – Right to protection in case of dismissal*

The compensation for unlawful termination of employment is subject to a maximum of one year’s wages.  
([Conclusions 2008](#))

### Thematic Group 2 “Health, social security and social protection”

► *Article 3§1 – Right to safe and healthy working conditions - Safety and health regulations*

There is no clearly defined policy on occupational health and safety.  
([Conclusions 2009](#))

► *Article 3§2 – Right to safe and healthy working conditions - Enforcement of safety and health regulations*

The self employed are not covered by health and safety at work legislation.  
([Conclusions 2009](#))

► *Article 3§3 – Right to safe and healthy working conditions - Consultation with employers’ and workers’ organisations on safety and health issues*

There is no efficient labour inspection system.  
([Conclusions 2009](#))

► *Article 11§1 – Right to protection of health - Removal of the causes of ill-health*

It has not been demonstrated that adequate measures have been taken to reduce the maternal mortality rate.

([Conclusions 2009](#))

► *Article 11§2 - Right to protection of health - Advisory and educational facilities*

- it has not been demonstrated that other health issues than creating an environment conducive to promoting health are addressed at schools;

- it has not been demonstrated that pregnant women are entitled to free consultations and screenings; and

- it has not been demonstrated that medical examinations at schools are of sufficient frequency, the proportion of pupils covered is sufficient and that screening is free.

([Conclusions 2009](#))

### Thematic Group 3 “Labour rights”

► *Article 2§1 – Right to just conditions of work – Reasonable working time*

Regulations permit weekly working time of more than 60 hours in various sectors of activity.  
([Conclusions 2010](#))

► *Article 2§2 – Right to just conditions of work – Public holiday with pay*

Work performed on a public holiday is not compensated at a sufficiently high level.  
([Conclusions 2010](#))

► *Article 2§3 – Right to just conditions of work - Annual holiday with pay*

Employees may relinquish annual leave in return for increased remuneration.  
([Conclusions 2010](#))

► *Article 2§4 — Right to just conditions of work - Elimination of risks in dangerous or unhealthy occupations*

There is no prevention policy for the risks in inherently dangerous or unhealthy occupations.

Workers exposed to residual risks to health and safety cannot benefit from reduced working hours or additional paid holidays, or other sufficient compensation.

([Conclusions 2010](#))



► *Article 2§5 – Right to just conditions of work – Weekly rest period*

This provision does not apply to the great majority of the workers concerned.

([Conclusions 2010](#))

► *Article 4§1 – Right to a fair remuneration – Decent remuneration*

The minimum net wage is manifestly unfair.

([Conclusions 2010](#))

► *Article 4§4 – Right to a fair remuneration - Reasonable notice of termination of employment*

Five days' notice is insufficient for workers with fewer than three months' service, even in the probationary period.

In the case of written agreement or a collective agreement, one month is not a sufficient period of notice for workers with five or more years' service.

([Conclusions 2010](#))

► *Article 4§5 – Right to a fair remuneration - Limits to deduction from wages*

It has not been established that deductions from wages will not deprive workers and their dependents of their very means of subsistence.

([Conclusions 2010](#))

► *Article 5 – Right to organise*

Police personnel do not enjoy the right to form trade unions.

It has not been established that the prohibition from enjoying the right to form a trade union was not applied to an excessively high proportion of senior civil servants.

([Conclusions 2010](#))

► *Article 6§1 – Right to bargain collectively - Joint consultation*

It has not been established that refusals of the representative status to trade unions are subject to judicial review.

It has not been established that consultation also takes place in the public sector.

([Conclusions 2010](#))

► *Article 6§2 – Right to bargain collectively - Negotiation procedures*

It has not been established that civil servants are entitled to participate in the processes that result in the determination of the regulations applicable to them.

([Conclusions 2010](#))

► *Article 6§3 – Right to bargain collectively - Conciliation and arbitration*

The circumstances in which recourse to compulsory arbitration is authorised go beyond the limits set out in Article G of the Revised Charter.

([Conclusions 2010](#))

► *Article 6§4 – Right to bargain collectively - Collective action*

- Civil servants are denied the right to strike;
- Employees in electricity and water supply services are denied the right to strike.

([Conclusions 2010](#))

► *Article 22 – Right of workers to take part in the determination and improvement of working conditions and working environment*

Employees are not granted an effective right to participate in the decision-making process within the undertaking.

([Conclusions 2010](#))

► *Article 26§2 - Right to dignity in the workplace – moral harassment*

It has not been established that effective protection of employees against any form of moral harassment is in place.

([Conclusions 2010](#))

► *Article 28 - Right of workers' representatives to protection in the undertaking and facilities to be accorded to them*

Union representatives are protected against dismissal during the performance of their functions only until their mandate expires.

([Conclusions 2010](#))

#### **Thematic Group 4 “Children, families, migrants”**

► *Article 7§1 - Right of children and young persons to protection- Prohibition of employment under the age of 15*

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

([Conclusions 2011](#))

► *Article 7§2 - Right of children and young persons to protection - Prohibition of employment under the age of 18 for dangerous or unhealthy activities*

The prohibition of employment under the age of 18 for dangerous or unhealthy activities is not guaranteed in practice.

([Conclusions 2011](#))

► *Article 7§3 - Right of children and young persons to protection - Prohibition of employment of children subject to compulsory education*

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.

([Conclusions 2011](#))

► *Article 7§6- Right of children and young persons to protection - Inclusion of time spent on vocational training in the normal working time*

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.

([Conclusions 2011](#))

► *Article 7§7-- Right of children and young persons to protection - Paid annual holidays*

It has not been established that young workers do not relinquish annual leave in return for increased remuneration.

([Conclusions 2011](#))

► *Article 7§10 – Right of children and young persons to protection - Special protection against physical and moral dangers*

- 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.

([Conclusions 2011](#))

**The European Committee of Social Rights has been unable to assess compliance with the following rights and has invited the Albanian Government to provide more information in the next report in respect of the following provisions:**

#### **Thematic Group 1 “Employment, training and equal opportunities”**

(Report to be submitted by 31/10/2011)

Article 1§§1,	2,	3	and	4	–	Conclusions	2008
Article 20			–			Conclusions	2008
Article 25 – Conclusions 2008							

**Thematic Group 2 “Health, social security and social protection”**  
(Report to be submitted by 31/10/2012)

Article 3§4 – Conclusions 2009  
Article 11§3 – Conclusions 2009

**Thematic Group 3 “Labour rights”**  
(Report to be submitted by 31/10/2013)

Article 2§7 – Conclusions 2010  
Article 21 – Conclusions 2010

**Thematic Group 4 “Children, families, migrants”**  
(Report to be submitted on 01/11/2014)

Article 7§9 – Conclusions 2011  
Article 8§5 – Conclusions 2011  
Article 19§3, 4, 6, 8, 10 and 12 – Conclusions 2011

## APPENDIX 2



European  
Social  
Charter

Charte  
Sociale  
Européenne



## PROGRAMME

**MEETING ON THE NON ACCEPTED PROVISIONS  
OF THE REVISED EUROPEAN SOCIAL CHARTER**

**Organised by  
the Department of  
the European Social Charter and European Code of Social Security  
DG I  
Council of Europe**

**and**

**the Ministry of Labour, Social Affairs and Equal Opportunities  
of the Republic of Albania**

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**Tirana, Albania  
5th June 2012**

The Seminar is organised in the framework of the procedure provided for by Article 22 of the 1961 Charter on “non-accepted provisions”. It will consist in an exchange of views and information on the provisions not accepted by Albania.

The overall objective is to ensure effectiveness of fundamental social rights in Albania.

<b>PROGRAMME</b>
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<b>Tuesday 5 June 2012</b>
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**(Venue – Hotel Tirana International, Salla Onufri)**

**09:00 – 09:15            Opening remarks**

Mr Kastriot SULKA, Deputy Minister of Labour, Social Affairs and Equal Opportunities of Albania

Mr Régis BRILLAT, Head of Department, Executive Secretary of the European Committee of Social Rights, Council of Europe

**Focus on the specific provisions of the Social Charter**

Following a decision taken by the Committee of Ministers in 2006, under the current reporting system the provisions of both the 1961 Charter and the Revised Charter have been divided into four thematic groups. Albania has accepted the provisions belonging to 3<sup>rd</sup> group, therefore provisions under 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> groups will be discussed during this present meeting.

**09:15 – 10:45            First topic: Employment, training and equal opportunities  
(Articles 9, 10, 15, 18)**

Ms Rovena DEMIRAJ, Administrator, Department of the European Social Charter, Council of Europe

Mr Giuseppe PALMISANO, Member of the European Committee of Social Rights, Council of Europe

Presentation of the situation in Albania by the representative of the Albanian Government

Ms Arjeta NDRICO, Directorate of Employment Policies

Ms Blerina TEPELENA, Directorate of Monitoring of Intersectorial Strategies

Ms Silva BANUSHI, Directorate of Migration, Return and Reintegration Policies

Ms Merita SELITA, Legal Directorate, Social Security Institute

Discussion

**10:45 – 11:00            Coffee break**

**11:00 – 13:00            Second topic: Health, social security and social protection  
(Articles 12, 13, 14, 23, 30)**

Mr Régis BRILLAT, Head of Department, Executive Secretary of the European Committee of Social Rights, Council of Europe

Ms Csilla KOLLONAY LEHOCZKY, Member of the European Committee of Social Rights, Council of Europe

Ms Rovena DEMIRAJ, Administrator, Department of the European Social Charter, Council of Europe

Presentation of the situation in Albania by the representative of the Albanian Government

Ms Mirela SELITA, Legal Directorate, Social Security Institute

Mr Gazmend BEJTJA

Ms Denada SEFERI, Directorate of Social Services Policies

Ms Tefta GINA, Sector of Housing Policies

Discussion

**13:00 – 14:00**

**Lunch**

**14:00 – 15:30**

**Fourth topic: Children, families and migrants' issues (Articles 16, 17, 27, 31)**

Ms Csilla KOLLONAY LEHOCZKY, Member of the European Committee of Social Rights, Council of Europe

Mr Giuseppe PALMISANO, Member of the European Committee of Social Rights, Council of Europe

Presentation of the situation in Albania by the representative of the Albanian Government

Ms Alida TOTA, Directorate of Equal Opportunities and Family Policies

Ms Miranda PASHA, National Agency of Human Rights Protection

Ms Klejda NGJELA, Directorate of Integration

Ms Tefta GINA, Sector of Housing Policies

Discussion

**15:30 – 15:45**

**Coffee break**

**15:45 – 16:45**

**The collective complaint procedure**

Ms Csilla KOLLONAY LEHOCZKY, Member of the European Committee of Social Rights, Council of Europe

Mr Régis BRILLAT, Head of Department, Executive Secretary  
of the European Committee of Social Rights, Council of Europe

Presentation of the situation in Albania by the representative of  
the Albanian Government

Mr Astrit KUKA

Discussion

**16:45 – 17:00**

**Concluding remarks**

**17:00**

**Closing of the meeting**

## APPENDIX 3

**Declaration of the Committee of Ministers  
on the 50th anniversary of the European Social Charter**

*(Adopted by the Committee of Ministers on 12 October 2011  
at the 1123rd meeting of the Ministers' Deputies)*

The Committee of Ministers of the Council of Europe,

Considering the European Social Charter, opened for signature in Turin on 18 October 1961 and revised in Strasbourg on 3 May 1996 (“the Charter”);

Reaffirming that all human rights are universal, indivisible and interdependent and interrelated;

Stressing its attachment to human dignity and the protection of all human rights;

Emphasising that human rights must be enjoyed without discrimination;

Reiterating its determination to build cohesive societies by ensuring fair access to social rights, fighting exclusion and protecting vulnerable groups;

Underlining the particular relevance of social rights and their guarantee in times of economic difficulties, in particular for individuals belonging to vulnerable groups;

On the occasion of the 50th anniversary of the Charter,

1. Solemnly reaffirms the paramount role of the Charter in guaranteeing and promoting social rights on our continent;
2. Welcomes the great number of ratifications since the Second Summit of Heads of States and Governments where it was decided to promote and make full use of the Charter, and calls on all those member states that have not yet ratified the Revised European Social Charter to consider doing so;
3. Recognises the contribution of the collective complaints mechanism in furthering the implementation of social rights, and calls on those members states not having done so to consider accepting the system of collective complaints;
4. Expresses its resolve to secure the effectiveness of the Social Charter through an appropriate and efficient reporting system and, where applicable, the collective complaints procedure;



5. Welcomes the numerous examples of measures taken by States Parties to implement and respect the Charter, and calls on governments to take account, in an appropriate manner, of all the various observations made in the conclusions of the European Committee of Social Rights and in the reports of the Governmental Committee;

6. Affirms its determination to support States Parties in bringing their domestic situation into conformity with the Charter and to ensure the expertise and independence of the European Committee of Social Rights;

7. Invites member states and the relevant bodies of the Council of Europe to increase their effort to raise awareness of the Charter at national level amongst legal practitioners, academics and social partners as well as to inform the public at large of their rights.