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EUROPEAN SOCIAL CHARTER

European Committee of Social Rights

Conclusions 2019

ALBANIA

This text may be subject to editorial revision.

The function of the European Committee of Social Rights is to rule on the conformity of the situation in States with the European Social Charter. In respect of national reports, it adopts conclusions; in respect of collective complaints, it adopts "decisions".

A presentation of this treaty as well as statements of interpretation formulated by the Committee appear in the General Introduction to the Conclusions.¹

The Revised European Social Charter was ratified by Albania on 14 November 2002. The time limit for submitting the 10th report on the application of this treaty to the Council of Europe was 31 October 2018 and Albania submitted it on 28 February 2019.

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

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

Albania has accepted all provisions from the above-mentioned group except Articles 16, 17, 27 and 31.

The reference period was 1 January 2014 to 31 December 2017.

The present chapter on Albania concerns 27 situations and contains:

- 8 conclusions of conformity: Articles 8§3, 8§4, 8§5, 19§2, 19§5, 19§7, 19§8 and 19§9;
- 17 conclusions of non-conformity: Articles 7§1, 7§2, 7§3, 7§4, 7§5, 7§6, 7§7, 7§8, 7§9, 7§10, 8§1, 8§2, 19§3, 19§4, 19§6, 19§10 and 19§12.

In respect of the other 2 situations concerning Articles 19§1 and 19§11, the Committee needs further information in order to assess the situation.

The Committee considers that the absence of the information required amounts to a breach of the reporting obligation entered into by Albania under the Revised Charter. The Government consequently has an obligation to provide this information in the next report from Albania on the articles in question.

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

- the right to work (Article 1),
- the right to vocational guidance (Article 9),
- the right to vocational training (Article 10),
- the right of persons with disabilities to independence, social integration and participation in the life of the community (Article 15),
- the right to engage in a gainful occupation in the territory of other States Parties (Article 18),
- the right of men and women to equal opportunities (Article 20),
- the right to protection in cases of termination of employment (Article 24),
- the right to workers to the protection of claims in the event of insolvency of the employer (Article 25).

The deadline for the report was 31 December 2019.

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

Article 7 - Right of children and young persons to protection

Paragraph 1 - Prohibition of employment under the age of 15

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

In its last Conclusion (2011), the Committee concluded that the situation in Albania was not in conformity with Article 7§1 of the Charter on the grounds that: definition of light work authorised by legislation was not sufficiently precise and prohibition of employment under the age of 15 was not guaranteed in practice.

The Government report indicates that since the 2015 Amendments of the Labour Code, the minimum age of admission to employment is set at 16 years. A regulation sets out requirements for protecting the safety and health of children under 18 years of age, providing a list of forbidden hazardous occupations for children. The Labour Code offers special protection of children subject to compulsory education and imposes restrictions on their employment. Article 102 of the Labour Code provides for the opportunity of employment of children under the age of 15, who are attending compulsory full-time education with a view of carrying out cultural, artistic, sports or advertising activities. Children aged 16-18 years may work but are restricted from work performed at night or deemed harmful to their health or growth. Young persons aged 15-16 years can be employed during school holidays only in light work that does not harm their health and education.

According to Article 99 of the Labour Code, a "light work" is considered the work that due to the inherent nature of the particular duties and conditions in which it is performed, i.e. the accompanying elements during its performance does not affect the safety, health or development of children or school attendance, participation in vocational guidance or training programs approved by responsible institutions or the capacity of children to take advantage of this training.

In addition, Law "On the Rights and Protection of the Child" strengthened the protection of children from economic exploitation. In all cases, their engagement should be authorised by the Central Labour Inspectorate. The Criminal Code offers protection from, and prosecution for, economic exploitation of children. The Council of Ministers' decision No. 108/2017 "On the Protection of Children at Work" sets out detailed requirements for protecting the safety and health of children under the age of 18 from economic exploitation and any labour that may harm their safety and health, or physical, mental, moral and social development, and intervene with their education or participation in cultural and commercial activities.

The Government's report does not provide any detailed data on child labour and in particular, figures on children under the age of 16 in child labour, attending school; children under the age of 16 in child labour, not attending school; children in hazardous works and household chores, children engaged illegally or in illegal activities.

The Committee took note of the report adopted by the Office of the Albanian Ombudsperson (adopted in November 2018) on the situation of child labour in Albania, where it is found that about 200 children are exploited for work in the energy sector, mainly in the mines of Bulqiza, one of the poorest regions in Albania. The report makes a series of recommendations for improving the legal framework and institutional measures that should be taken by the responsible state mechanisms, at central and local level, on this issue. The report also indicates that there are no sufficient statistics on children exploited in Albania.

The European Commission's country reports of 2017 and 2018 indicate that, in Albania, child labour remains a concern, with more effective measures needed to prevent it. The same reports point out that there is also a need to improve the system of monitoring child labour and labour inspectorate capacity and performance should be further increased, investigations of suspected cases of fraud and misconduct by social inspectors strengthened.

According to national NGO-s (The Albanian Coalition against Child Trafficking and Sexual Exploitation of Children (ACTSEC) supported by the Children's Human Rights Centre of

Albania (CRCA)), over 50 000 children work on light and heavy work to ensure the survival of their families. A 2017 UNICEF study on Albania's investment in education noted that about 15 000 children are out of school, many of them engaged in child labour^[1]. Over 2500 children in Albania beg and live on the streets according to a National Study on Children in Street Situation by UNICEF.

The Committee recalls that the effective protection from child labour cannot be ensured solely by legislation; the legislation must be effectively applied in practice (Article 7§1). EU reports have identified flaws in labour inspectorates functioning and the above-mentioned figures of children engaged in labour published by national NGO-s suffice to show that protection from child labour is not guaranteed in practice. The mere statement in the report that during the inspections conducted by labour inspectorates for the years 2014-2017, no children under the age of 15 were reported as employed; other fragmented data submitted could not satisfy the requirements of Article 7§1.

The report does not contain enough evidence showing that adequate safeguards such as social services and effective supervision structures are put in place to protect children from work which could deprive them of the full benefit of their education. Therefore, the situation is not in conformity with Article 7§1 of the Charter.

Moreover, it is not clear from the report whether the minimum age of admission to the employment of 16 applies to children employed by close relatives.

In this regard, the Government's report indicates that some measures have been taken to protect children in street situation and that new legislative measures are ongoing. However, the fact that a significant number of children are begging on the streets in the country shows that the Government has not taken the necessary measures to guarantee these minors the special protection against physical and moral hazards, as required by Article 7§1, thereby causing a serious threat to their enjoyment of the most fundamental rights, such as the right to life, to psychological and physical integrity and to respect for human dignity. This situation violates article 7§1 of the Charter.

Taking stock of the situation in Albania regarding child labour, the Committee asks that the next report provides:

- data and figures of children in child labour (children under the age of 16 in child labour, attending school; children under the age of 16 in child labour, not attending school; children in hazardous works and household chores);
- information on the measures taken to ensure that the Labour Inspectorates and social services are effectively supervising the implementation of the national legislation on child labour;

Conclusion

The Committee concludes that the situation in Albania is not in conformity with Article 7§1 of the Charter on the ground that the protection of children from child labour exploitation is not guaranteed in practice

^[1] [Report](#) by the Commissioner for Human Rights of the Council of Europe following her visit to Albania from 21 to 25 May 2018, §40.

Article 7 - Right of children and young persons to protection

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

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

In its last conclusion (2011) the Committee concluded that the situation in Albania was not in conformity with Article 7§2 of the Charter on the ground that the prohibition of employment under the age of 18 for dangerous or unhealthy activities is not guaranteed in practice.

The Committee points out that domestic law should lay down age 18 as the minimum age for employment in occupations regarded as dangerous or unhealthy. The only possible exceptions are where work of this type is strictly necessary for the young persons' vocational training, and only where they are supervised by a competent person, or where young people under the age of 18 have completed their training for carrying out dangerous tasks.

Under Article 100 of the labour code, it is forbidden to employ workers under the age of 18 on certain categories of work which could endanger their health, safety or morals, or work of which they are physically incapable. Detailed rules for the protection of children at work are provided for in the Decision of Council of Ministers No. 108/2017. Annex 1 of this regulation provides for a non-exhaustive list of agents, processes and work in cases where exposure to related risks is prohibited.

The report adopted by the Office of the Albanian Ombudsperson (see article 7§1) states that about 200 young children are exploited for work in the energy sector, mainly in the mines of Bulqiza, one of the poorest regions in Albania. The report makes a series of recommendations for improving the legal framework and institutional measures that should be taken by the responsible state mechanisms, at central and local level, on this issue. The report also indicates that there are no sufficient statistics on children exploited in Albania. The Committee asks information on whether immediate action has been taken to remove the children from the hazardous work.

Conclusion

The Committee concludes that the situation in Albania is not in conformity with Article 7§2 of the Charter on the ground that: children are exploited for work in the energy sector, mainly in the mines of Bulqiza; the prohibition of employment under the age of 18 for dangerous or unhealthy activities is not guaranteed in practice.

Article 7 - Right of children and young persons to protection

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

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

In its last Conclusions (2011) the Committee concluded that the situation in Albania was not in conformity with Article 7§3 of the Charter on the ground that the effective protection against work which would deprive children subject to compulsory schooling of the full benefit of their education was not guaranteed in practice.

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

With respect to work during school holidays, the Committee notes that under Articles 98§1 to 102 of the Labour Code, 14-16 years old children may exceptionally be employed during school holidays in light work which do not affect their health and growth. In the case of children under 16 years old, there should not be more than 6 hours of work per day. Children of 14-16 years of age must have 4 weeks leave per year from school and from any kind of employment.

According to its Findings under Article 7§1, the Committee recalls that many children, especially in rural areas, are exploited in hazardous works or work with their families during the compulsory education period, a practice that is contrary to Article 7§3.

Conclusion

The Committee concludes that the situation in Albania is not in conformity with Article 7§3 of the Charter on the ground that the protection of children subject to compulsory schooling is not guaranteed in practice.

Article 7 - Right of children and young persons to protection

Paragraph 4 - Working time

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

The Committee recalls that under Article 7§4, domestic law must limit the working hours of persons under 18 years of age who are no longer subject to compulsory schooling. The limitation may be the result of legislation, regulations, contracts or practice (Conclusions 2006, Albania). For persons under 16 years of age, a limit of eight hours a day or forty hours a week is contrary to the article. However, for persons over 16 years of age, the same limits are in conformity with the article (Conclusions 2002, Italy).

In its last conclusion (2011) the Committee concluded that the situation in Albania was in conformity with Article 7§4 of the Charter.

The Council of Ministers' decision No. 108/2017 "On protection of children at work" DCM No. 108/2017 sets out detailed requirements on working time. Working time for children from 16 to 18 years old is limited up to 6 hours a day and 30 hours a week and up to 2 hours in a school day and 12 hours a week for work performed over a period beyond hours specified for school attendance. This limit may be increased to 8 hours in the case of children who have reached the age of 16. They are entitled to at least 4 weeks of annual holidays. The maximum working time for a child under 16 years old attending compulsory education shall not exceed 2 hours per day over a period of 24 hours, during school days or 10 hours overtime in a 7-day period, while the daily working time in such a case shall not exceed 6 hours in total; or 6 hours in a period of 24 hours or 30 hours in a total period of 7 days during school holidays. At least once per year, children under 16 years old must have a break period of 4 weeks free from any schooling activities and from any kind of work.

However the report does not contain enough evidence showing that adequate safeguards such as supervision structures are effectively operating to monitor children's working time. The Ombudsperson's report, the EU reports that have already identified flaws in labour inspectorates functioning and the important number of children engaged in labour as indicated by national NGO-s suffice to show that protection from child labour is not guaranteed in practice. Therefore the situation is not in conformity with Article 7§4 of the Charter.

Conclusion

The Committee concludes that the situation in Albania is not in conformity with Article 7§4 of the Charter on the ground that the effective implementation of the law is not guaranteed in practice.

Article 7 - Right of children and young persons to protection

Paragraph 5 - Fair pay

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

Pursuant to Article 7§5, domestic law must provide for the right of young workers to a fair wage and of apprentices to appropriate allowances. This right may be derived from statutory law, collective agreements or other sources.

The “fair” or “appropriate” nature of the wage is assessed by comparing young workers’ remuneration with the starting wage or minimum wage paid to adults (aged eighteen or above) (Conclusions XI-1 (1991), United-Kingdom). In accordance with the methodology adopted under Article 4§1, wages taken into consideration are those paid after deduction of taxes and social security contributions.

Young workers

Young workers’ wages may be less than adults’ starting wages, but any difference must be reasonable and the gap must close quickly (Conclusions II (1971), Statement of Interpretation on Article 7§5). For 15-16 year-olds, a wage 30% lower than the adult starting wage is acceptable. For 16-18 year-olds, the difference may not exceed 20% (Conclusions 2006, Albania).

The adult reference wage must in all cases be sufficient to comply with Article 4§1 of the Charter. If the reference wage is too low, even a young worker’s wage which respects these percentage differentials is not considered fair (Conclusions XII-2 (1992), Malta).

The Committee points out that to be considered fair, a net minimum wage should amount to no less than 60% of a net average wage. If the wage lies between 50% and 60%, a state is asked to demonstrate that the wage is sufficient for a decent standard of living, e.g. by providing detailed information on the cost of living. In its last conclusion (2010) the Committee found the situation not to be in conformity with Article 4§1 regarding fair pay for adult workers, since the net minimum wage is less than 60% of the net median wage. There has been no change in this situation. During the reference period the net median wage varied from 385 to 432 EUR, (in 2019, 393 EUR) and net minimum wage varied from 180 to 200 EUR (210 EUR in 2019). As the net minimum wage is between 50 and 60%, the Committee must determine whether this wage is sufficient to ensure a decent standard of living. There is no information in the report on this subject. (negative finding adopted in 2010 with regard to Albania under Article 4§1). In the absence of information, the Committee considers that the net minimum wage remains manifestly unfair.

There is no information in the report on young workers’ wages. Since the net minimum wage in Albania is manifestly unfair, young persons’ wages cannot be considered fair, even if they differ from adult wages by no more than the percentage mentioned above (Conclusions XII-2 (1992), Malta).

Consequently, the Committee finds that the situation is not in conformity with Article 7§5 of the 1961 Charter on the ground that the wages paid to young workers are unfair.

Apprentices

Apprentices may be paid lower wages, since the value of the on-the-job training they receive must be taken into account. However, the apprenticeship system must not be deflected from its purpose and be used to underpay young workers. Accordingly, the terms of apprenticeships should not last too long and, as skills are acquired, the allowance should be gradually increased throughout the contract period (Conclusions II (1971), Statement of Interpretation on Article 7§5), starting from at least one-third of the adult starting wage or minimum wage at the commencement of the apprenticeship, and arriving at least at two-thirds at the end (Conclusions 2006, Portugal).

The report states that anyone carrying out an apprenticeship is entitled to be paid for the duration thereof.

Under Article 111, point 3, of the Labour Code the Council of Ministers may set a lower wage than the national minimum wage for apprentices. However, the Committee sees no reason to depart from its previous conclusion and reiterates its argument that, since the net minimum wage in Albania is manifestly unfair, young persons' wages cannot be considered fair, even if they differ from adult wages by no more than the percentage mentioned above (Conclusions XII-2 (1992), Malta).

The Committee asks for information in the next report on the net wages paid to young workers and apprentices (after deduction of social security contributions) at the beginning and the end of their apprenticeships.

Conclusion

The Committee concludes that the situation in Albania is not in conformity with Article 7§5 of the Charter on the ground that: •the wages paid to young workers and apprentices are not fair.

Article 7 - Right of children and young persons to protection

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

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

In Conclusions 2011, the Committee found that the situation in Albania was not in conformity with Article 7§6 of the Charter on the ground that it had not been established that time spent on vocational training would be considered to be working time and remunerated as such.

The report confirms that any time spent by a young person on a combined work/training scheme with the consent of the employer is deemed to be working time in accordance with Article 76 of the Labour Code.

However, the Ombudsperson's report and the European Commission's annual reports have already identified shortcomings in the functioning of labour inspections. The Committee points out that, under Article 7, conformity cannot be achieved solely by the operation of legislation if it is not effectively applied and rigorously monitored. The Committee also points out that the situation in practice should be regularly monitored and asks for information in the next report on the labour inspectorate's monitoring activities and findings (violations detected and sanctions applied) in cases where the relevant regulations have not been applied to young workers.

The Committee also asks whether these provisions apply to young persons employed by a close relative.

Conclusion

The Committee concludes that the situation in Albania is not in conformity with Article 7§6 of the Charter on the ground that the effective implementation of the law is not guaranteed in practice.

Article 7 - Right of children and young persons to protection
Paragraph 7 - Paid annual holidays

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

In Conclusions 2011, the Committee concluded that the situation in Albania was not in conformity with Article 7§7 of the Charter on the ground that it had not been established that young workers may not waive annual leave in return for increased remuneration.

It points out that under Article 7§7, employers must grant young persons under 18 at least four weeks' paid annual holiday. The arrangements are the same as those that apply to annual paid leave for adults (Article 2§3). Employed persons under 18 should not have the option of waiving their annual paid holiday; in the event of an illness or accident during the holidays, they must have the right to take the leave lost at some other time.

Under Article 92 of the Labour Code, workers have a right to paid annual holiday and cannot waive this right. The duration of this holiday is set out in the employment contract but must be no less than four calendar weeks. Workers who are temporarily unable to work during their annual leave must be able to prolong their leave at the end of the period of incapacity. In view of the fact that the purpose of annual leave is the employee's physical and intellectual recovery, Article 94, point 5, of the Labour Code provides that annual leave cannot be replaced by remuneration.

However, the Ombudsperson's report and the European Commission's annual reports have identified shortcomings in the functioning of labour inspections. The Committee points out that the satisfactory application of Article 7 cannot be achieved solely by the operation of legislation if it is not effectively applied and rigorously monitored. It further points out that the situation in practice should be regularly monitored and asks for information in the next report on the labour inspectorate's monitoring activities, their findings, and the sanctions applied for breaches of the applicable regulations regarding paid annual holidays for young workers.

The Committee also asks whether these provisions apply to young persons employed by a close relative.

Conclusion

The Committee concludes that the situation in Albania is not in conformity with Article 7§7 of the Charter on the ground that the effective implementation of the law is not guaranteed in practice.

Article 7 - Right of children and young persons to protection

Paragraph 8 - Prohibition of night work

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

It found previously that the situation in Albania was in conformity with Article 7§8 of the Charter.

Article 101 of the Labour Code prohibits night work for persons under the age of 18, and this prohibition is confirmed by Decision No. 108 of 15 February 2017 on the protection of children at work.

The Committee points out that the situation in practice should be regularly monitored and asks for information in the next report on the labour inspectorate's monitoring activities, the infringements identified and the sanctions applied for breaches of the regulations concerning persons under the age of 18. The Committee also asks for information on the number of young persons employed by close relatives.

The report does not contain sufficient proof that adequate safeguards such as effective monitoring mechanisms have been set up to protect young people from night work.

The Committee is unable to assess whether it is prohibited for the great majority of persons under 18 to work at night and considers that the situation is not in conformity in this respect.

Conclusion

The Committee concludes that the situation in Albania is not in conformity with Article 7§8 of the Charter on the ground that the effective implementation of the law is not guaranteed in practice.

Article 7 - Right of children and young persons to protection

Paragraph 9 - Regular medical examination

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

In its previous conclusion (Conclusions 2011), the Committee deferred its decision owing to a lack of information.

The report states that under Article 103 of the Labour Code, persons under the age of 18 are required to undergo a full medical examination before being hired, to assess their ability for work. Article 5 of Council of Ministers' Decision No. 108 of 15 February 2017 on health monitoring strengthens this obligation by requiring that young workers "submit to the doctor a report from the forensic commission stating that they are able to work".

During the employment relationship, employers must ensure that the employee's health is properly monitored in keeping with the risks associated with the work he/she performs. Examinations shall be carried out at least once a year.

Employers must cover the expenses of young workers' periodical medical examinations and ensure that any data relating to their condition remains confidential. Employers must notify children or young persons of the results of medical examinations or health check-ups; for minors, this information must also be communicated to their parents or guardian.

For the period from January to December 2017, during inspections conducted by the labour inspectorate, 309 young persons were identified as workers and only 27 of these persons under the age of 18 had not undergone a medical examination. In these cases, the inspectors issued warnings or imposed administrative sanctions or suspensions until such examinations were carried out.

However, the situation of children exploited to work in the energy sector, mainly in the Bulqiza mines, does not allow to conclude that the law is effectively implemented.

Conclusion

The Committee concludes that the situation in Albania is not in conformity with Article 7§9 of the Charter on the ground that the effective implementation of the law is not guaranteed in practice.

Article 7 - Right of children and young persons to protection
Paragraph 10 - Special protection against physical and moral dangers

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

Protection against sexual exploitation

In its previous conclusion (Conclusions 2011), the Committee required more detailed information about measures undertaken in practice to reduce and prevent the sexual exploitation of children.

According to the report Law No. 18/2017 on the Rights and Protection of the Child improves the child protection system. In particular, article 23 of the Law provides for the protection of children from all forms of violence, and includes measures to protect children who are abused, raped, neglected, children who are economically exploited and children accused of committing criminal offences but who have not reached the age of criminal responsibility.

Article 26 of Law No. 18/2017 provides that a child shall be protected from trafficking and sale as well as all from all forms of sexual exploitation and abuse, including child prostitution or other unlawful sexual practices, exposure, to or participation in pornographic material, in accordance with the provisions of the Criminal Code and other laws in force.

The Committee notes that the Criminal Code criminalises the possession of child pornography.

The Committee asks the next report to provide updated information regarding the incidence of sexual abuse and sexual exploitation as well information on prosecutions and convictions for the sexual exploitation of children. **It also requests information on measures taken to address the problem such as awareness raising and the existence of a national action plan combating the sexual exploitation of children .**

Protection against the misuse of information technologies

The report does not provide information on this point.

The Committee requests that the next report provide detailed information on the measures taken to protect children against the misuse of information technologies in particular as according to ECPAT's report on Albania (2018), traffickers are increasingly using social media to recruit victims.

Protection from other forms of exploitation

The Committee previously considered that the situation was not in conformity with the Charter on the grounds that measures taken to combat the trafficking of children were not sufficient.

According to the report the National Action Plan to Combat Trafficking in Persons 2018-2020, building on previous plans, aims to improve the identification, protection and reintegration of victims of trafficking. The Committee notes that the Ministry of Interior adopted the National Strategy on Integrated Border Management 2014-2020 .

The Committee notes from the report that the National Reception Centre for Victims of Trafficking has dealt with approximately 198 victims or potential victims of trafficking since 2012 and that in 71 cases the victims were under the age of 18. When a child is accommodated in the centre, he or she is provided with the services of a psychologist and medical and legal services.

The Committee notes from GRETA's report on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Albania (2016) that trafficking and exploitation for different purposes of women, men and children within Albania has increased and that there have been more identified victims of internal trafficking than of transnational trafficking. The risks of human trafficking increases during the tourist season, particularly for the purposes of sexual exploitation and forced begging. In recent years,

hundreds of children of Albanian origin have been detected as potential victims of human trafficking in the United Kingdom. The Committee asks that the next report include information on the measures taken by the state to respond to these findings.

In light of the information available the Committee reiterates its previous finding of non conformity on the grounds that it has not been demonstrated that measures taken to combat trafficking in children are sufficient.

The Committee previously concluded that the situation was not in conformity with the Charter on the grounds that measures taken to assist and protect children in street situations were not sufficient (Conclusions 2011).

The Committee notes from the report that, based on the national study on children in street situation in Albania (2012), the National Action Plan « On identification and protection of children in street situation 2015-2017 » was drafted to protect children from all forms of abuse, exploitation and neglect through a comprehensive and integrated inter-sectoral approach. In addition, the Action Plan for the Protection of Children from Economic Exploitation and Street Children 2018-2020 is being developed. The Committee asks that the next report provide information on the implementation of these plans in practice.

The State Agency for Children's Rights and Protection, with the support of the OSCE Presence in Albania and Save the Children has coordinated the process of developing local plans for children in street situations and is monitoring their implementation in the municipalities of Durrës, Elbasan, Fier, Shkodër, Korçë and Vlore.

The Committee also notes that in accordance with Law No. 18/2017, a draft decision on procedures for the identification, immediate assistance and referral of economically exploited children, including street children, has been prepared. The draft decision aims to establish rules and procedures for the identification, immediate assistance and referral of the children concerned to appropriate structures. The Committee asks that the next report should provide information on developments in relation to this draft decision.

According to the report, in 2017, 29 field teams active in Albania identified 484 street children, 251 of whom are being assisted. Child protection units and not-for-profit organisations help get 70 to 80 identified street children back to school each year.

The Committee notes from the ECPAT Albania report (2018), that over 2500 children in Albania beg and live on the streets, while over 50 000 children are reportedly working in domestic labour to ensure the survival of their families.

Recalling that children in street situations are particularly exposed to trafficking and worst forms of child labour, the Committee refers to the General Comment No. 21 of the UN Committee on the Rights of the Child which provides authoritative guidance to States on developing comprehensive, long-term national strategies on children in street situations using a holistic, child rights approach and addressing both prevention and response in line with the Convention on the Rights of the Child, which has been ratified by Albania.

As regards children subject to economic exploitation the Committee recalls that it found that the situation under Articles 7.1 and 7.3 of the Charter not to be in conformity on the grounds that the protection of children from labour exploitation was not guaranteed in practice, in particular it noted a report of the Office of the Albanian Ombudsperson (2108) where it identified approximately 200 children working in mines. The Committee considers that this situation also gives rise to a violation of Article 7.10.

The Committee notes from an ILO Individual Case (CAS) Discussion: 2015 (Publication: 104th ILC session) the high number of children in street situations and Roma children with low levels of education involved in the worst forms of child labour including trafficking, begging and work on the streets.

The Committee also refers to the Concluding Observations of the UN Committee on the Rights of the Child on the combined second to fourth periodic reports of Albania [2012, CRC/C/ALB/CO/2-4, 2012] according to which a large number of children are subjected to economic exploitation in Albania and some are involved in hazardous occupations. The Committee notes that this report falls outside the reference period and is dated but notes that the Governments report provides no information on improvements in the situation.

The Committee requests that the next report provide information on the extent of the problem and the results of the implementation of action plans and other programmes or measures taken to protect children in vulnerable situations from all forms of exploitation, with particular attention to children in street situations and children at risk of child labour, including those in rural areas.

It considers that, although the various projects and action plans are ambitious and promise improvement, the current situation does not demonstrate that Albania meets the requirements of Article 7§10 of the Charter with regard to the protection of children against such forms of exploitation, in this respect the Committee refers to the number of children in street situations and the number of children subject to economic exploitation.

The Committee recalls that under the Charter, the prohibition of all forms of corporal punishment of children is a measure that avoids discussions and concerns as to where the borderline would be between what might be acceptable form of corporal punishment and what is not (General Introduction to Conclusions XV-2(2001)). The Committee has clearly stated that all forms of corporal punishment must be prohibited in the home, in schools and in institutions. The sanctions available must be adequate, dissuasive and proportionate (Complaint No 18/2003, World Organisation against Torture (OMCT) v. Ireland, decision on the merits of 7 December 2004).

The Committee recalls that the Charter was conceived as a whole and in some cases its provisions complement each other, as well as overlap in part (Mental Disability Advocacy Center (MDAC) v. Bulgaria; Complaint No. 41/2007; decision on admissibility of 26 June 2007, §8). This is the case with the protection of children from ill-treatment and abuse. The Committee considers that the fact that the right of children and young persons to social, legal and economic protection is guaranteed under Article 17 of the Charter does not exclude the examination of certain relevant issues relating to the protection of children under Article 7§10. In this connection, the Committee recalls having held the scope of the said two provisions to overlap to a large extent (Conclusions XV-2 (2001), Statement of interpretation on Article 7§10).

Therefore, since Albania has not accepted Article 17§1 of the Charter, the Committee will examine the issue relating to corporal punishment under this provision. According to the report Article 23§4 of the Law No. 18/2017 on the Rights and Protection of the Child stipulates that corporal punishment or any other form of punishment that affects the physical and mental development of the child is prohibited. The Committee notes from the Global Initiative to End All Corporal Punishment of Children that Albania has prohibited all forms of corporal punishment in all settings.

Conclusion

The Committee concludes that the situation in Albania is not in conformity with Article 7§10 of the Charter on the grounds that:

- it has not been established that measures taken to combat trafficking of children are sufficient;
- measures taken to assist children in street situations are not sufficient;
- measures taken to protect children from economic exploitation are not sufficient.

Article 8 - Right of employed women to protection of maternity
Paragraph 1 - Maternity leave

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

Right to maternity leave

In its previous conclusions (Conclusions 2011 and 2007), the Committee found that the situation regarding the right to maternity leave was in conformity with Article 8§1 of the Charter. The report states that women employees are entitled to 365 days' maternity leave. The Committee also notes from the MISSCEO database that women employees are entitled to 365 days' maternity leave, including 35 compulsory days of prenatal leave and 63 compulsory days of postnatal leave. Maternity leave is longer in the event of multiple births (total duration of 390 calendar days with at least 60 days before and 63 days after childbirth). The Committee noted previously that the same rules applied to women employed in the public sector.

Right to maternity benefits

The report states that maternity benefit is awarded to insured women for pregnancy and childbirth as long as they have been insured for at least 12 months prior to each pregnancy. This restriction does not apply where the insured woman's eligibility for another maternity benefit occurs within 24 months from the date of birth of the previous child.

The Committee found previously (Conclusions 2011) that the situation was not in conformity with Article 8§1 of the Charter on the grounds that the period of 12 months was too long, the ones for which women were required to have contributed to the social security scheme prior to pregnancy. It asked therefore whether the women who did not meet the qualifying conditions for maternity benefit were entitled to other benefits.

In reply, the report states that the social insurance scheme does not provide benefits when the person has not paid social security contributions for 12 months. Non-contributing persons are not entitled to maternity benefits, but their case is dealt with under the social assistance scheme if they meet the related conditions. The Committee asks for more detailed information on this scheme in the next report and concludes that the situation is not yet in conformity with Article 8§1 of the Charter on the ground that the period of 12 months is too long, the ones for which women are required to contribute to the social security scheme prior to pregnancy to be entitled to maternity benefits.

The report does not provide any information on the level of maternity benefits.

The Committee refers to its Statement of Interpretation on Article 8§1 (Conclusions 2015) and asks whether the minimum rate of maternity benefits corresponds to at least 50% of the median equivalised income. The Committee recalls that, under Article 8§1, the level of income-replacement benefits should be fixed so as to stand in reasonable proportion to the previous salary (these shall be equal to the previous salary or close to its value, and not be less than 70% of the previous wage) and it should never fall below 50% of the median equivalised income (Statement of Interpretation on Article 8§1, Conclusions 2015). If the benefit in question stands between 40% and 50% of the median equivalised income, other benefits, including social assistance and housing, will be taken into account. On the other hand, if the level of the benefit is below 40% of the median equivalised income, it is manifestly inadequate and its combination with other benefits cannot bring the situation into conformity with Article 8§1. It points out that, should the necessary information not be provided in the next report, nothing will enable the Committee to establish that the situation in Albania is in conformity with Article 8§1 of the Charter in this respect.

Conclusion

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

Article 8 - Right of employed women to protection of maternity
Paragraph 2 - Illegality of dismissal during maternity leave

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

Prohibition of dismissal

The report states that under Article 107 of the Labour Code, the dismissal of a woman on maternity leave is considered void. It is for employers to prove that the dismissal is not based on pregnancy or birth (Article 105). Any dismissal occurring from the moment the employee has claimed maternity benefits is considered void. Article 146 of the Code stipulates that dismissals justified, for example, by the pregnancy of an employee are not by reasonable grounds, are void.

The Committee recalls that Article 8§2 of the Charter allows the dismissal of a worker during her pregnancy or maternity leave only in certain cases, in particular, if an employed woman has been guilty of misconduct which justifies breaking off the employment relationship; if the undertaking ceases to operate or if the period described in the employment contract has expired. However, these exceptions are strictly interpreted by the Committee.

Given that dismissal is possible during pregnancy (before claiming maternity benefits), the Committee considers that this situation is not in conformity with Article 8§2 of the Charter on the ground that the existence of adequate protection against unlawful dismissal during pregnancy has not been established.

Redress in case of unlawful dismissal

In its previous conclusion, the Committee noted that Article 146 of the Labour Code provided for a ceiling on the amount paid as compensation for unlawful dismissal based on pregnancy, set at one year's salary. It asked whether compensation covered both pecuniary and non-pecuniary damage and whether unlimited compensation for non-pecuniary damage could also be sought by the victim through other legal avenues (e.g. anti-discrimination legislation). It also asked whether both types of compensation were awarded by the same courts, and how long it took on average for courts to decide. It points out that, should the necessary information not be provided in the next report, nothing will enable the Committee to establish that the situation in Albania is in conformity with Article 8§2 of the Charter in this respect.

The report does not answer these questions; nevertheless, it indicates that the Labour Code was amended by Law No. 136/2015 with regard to special protection for pregnant and nursing mothers. According to Article 146 of the Labour Code, compensation for unlawful dismissal is limited to one year's salary. Courts may award compensation within this limit taking various factors into account (age, social status, dependants, the possibility of finding a new job, economic situation, financial obligations, psychological state, length of service).

The Committee recalls that compensation for unlawful dismissal must be both proportionate to the loss suffered by the victim and sufficiently dissuasive for employers. Any ceiling on compensation that may preclude damages from being commensurate with the loss suffered and sufficiently dissuasive is proscribed. If there is such a ceiling on compensation for pecuniary damage, the victim must be able to seek compensation for non-pecuniary damage through other legal avenues (e.g. anti-discrimination legislation), and the courts competent for awarding compensation for pecuniary and non-pecuniary damage must decide within a reasonable time (Conclusions 2011, Statement of interpretation of Article 8§2). In the light of the above, the Committee finds that the situation is not in conformity with Article 8§2 on the ground that the compensation awarded in the event of unlawful dismissal during pregnancy or maternity leave is inadequate.

In its previous conclusion (Conclusions 2011), the Committee found that the situation was not in conformity with Article 8§2 of the Charter on the ground that reinstatement was not the rule in case of unlawful dismissal on the ground of pregnancy. The report states that under Article

146§3 of the Labour Code, public sector employees must be reinstated when the court decision concerning unlawful dismissal is final, and when the employer is required to execute it. The Committee asks for more details on the reinstatement of public sector employees to be included in the next report. In the meantime, it reserves its position on this point. However, it considers that the situation is not in conformity with Article 8§2 of the Charter on the ground that reinstatement is not the rule in cases of dismissals on the grounds of pregnancy or maternity leave (after childbirth) in the private sector.

Conclusion

The Committee concludes that the situation in Albania is not in conformity with Article 8§2 of the Charter on the grounds that:

- it has not been established that there is adequate protection against unlawful dismissal during pregnancy,
- the compensation awarded in the event of unlawful dismissal during pregnancy and maternity leave is inadequate, and
- reinstatement is not the rule in cases of dismissals on the grounds of pregnancy or maternity leave (after childbirth) in the private sector.

Article 8 - Right of employed women to protection of maternity

Paragraph 3 - Time off for nursing mothers

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

The report indicates that there has been no change in the situation which the Committee found previously to be in conformity with Article 8§3 of the Charter (Conclusions 2011): women who are breastfeeding have the right to paid work breaks of no less than 20 minutes every three continuous working hours. This applies until the child is one year old. The report also confirms that the same provisions apply to employees in the public sector.

Le Comité demande quelles règles s'appliquent aux femmes travaillant à temps partiel.

Conclusion

The Committee concludes that the situation in Albania is in conformity with Article 8§3 of the Charter.

Article 8 - Right of employed women to protection of maternity
Paragraph 4 - Regulation of night work

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

In its previous conclusion (Conclusions 2011), the Committee found that the situation was in conformity with Article 8§4 of the Charter and asked whether special conditions were imposed regarding, for example, working hours breaks and rest period where women who had recently given birth or were breastfeeding decided to undertake night work.

The report indicates that the Labour Code was amended by Law No. 136/2015 of 5 December 2015 to transpose Council Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding. According to the report, Article 108 of the Labour Code now sets out the requirements and conditions relating to night work for pregnant women and mothers until their children are one year old. In this regard, employers may not require a mother to work at night if a medical certificate states that this type of work is likely to endanger the health of the mother and the child. The Committee notes that the new provision does not prohibit night work for this category of women.

The report also indicates that for the assessment of risks and the impact of night work on the health and safety of a woman and a child is provided but these must be carried out by a competent doctor and not by an employer.

Article 108(2) provides that if a pregnant or breastfeeding woman decides to resume work 63 days after giving birth (after compulsory postnatal leave), but produces a medical certificate declaring her incapable of night work but capable of work during daytime, the employer must transfer her to similar daytime work while taking into account her qualifications, professional skills and family circumstances. If the employer is unable to meet the requirement of transferring the employee to daytime work as this is not technically and/or objectively feasible, the employee has the right to continue to benefit from the advantages provided for by the relevant legislation covering the entire period necessary for her protection and for the protection of the health and safety of her child. The Committee asks for more detailed information in the next report on these advantages. It also asks whether this rule applies to women who have recently given birth but are not breastfeeding or whether special working conditions have to be offered.

The Committee asks what protection is afforded to women employed in the public sector.

The Committee refers to its Statement of Interpretation on Articles 8§4 and 8§5 (Conclusions 2019) and asks the next report to confirm that no loss of pay results from the changes in the working conditions or reassignment to a different post or any exemption from work for reasons related to pregnancy and maternity, and that the women concerned retain the right to return to their previous employment at the end of the protected period.

Conclusion

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

Article 8 - Right of employed women to protection of maternity
Paragraph 5 - Prohibition of dangerous, unhealthy or arduous work

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

In its previous conclusion (Conclusions 2011), the Committee found that the situation was in conformity with Article 8§5 of the Charter and asked what rules applied to women employed in the public sector.

In response, the report indicates that the Labour Code was amended by Law No. 136/2015 during the reference period. The new Code provides that where there are risks for a woman's health and safety at work or other risks which may have an impact on her pregnancy or breastfeeding of the child, employers are required to take the necessary measures to eliminate the risks or temporarily adapt the working conditions and/or hours. If this is not technically or objectively possible, employers should transfer the women concerned to another position with equal pay or, if no transfer is possible, grant paid leave until the risk is eliminated. The report confirms that the same provisions apply to women employed in the public sector.

The Committee refers to its Statement of Interpretation on Articles 8§4 and 8§5 (Conclusions 2019) and asks the next report to confirm that no loss of pay results from the changes in the working conditions and that in case of exemption from work related to pregnancy and maternity the woman concerned is entitled to paid leave.

In its previous conclusion (Conclusions 2015), the Committee also asked whether women's right to return to their previous employment was guaranteed by law when their state of health permitted it. The report does not contain any information on this subject. Therefore, the Committee reiterates its question. It points out that, should the necessary information not be provided in the next report, nothing will enable the Committee to establish that the situation in Albania is in conformity with Article 8§5 of the Charter in this respect.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Albania is in conformity with Article 8§5 of the Charter.

Article 19 - Right of migrant workers and their families to protection and assistance
Paragraph 1 - Assistance and information on migration

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

Migration trends

The Committee has assessed the migration trends in Albania in its previous conclusion ([Conclusions 2011](#)). The report does not provide any new information in this regard. The Committee asks that the next report includes an up-to-date description of the developments in the migration trends.

Change in policy and the legal framework

The Committee notes that it has previously assessed the policy and legal framework relating to migration matters (Conclusions 20xx). The report provides no information on any changes in this respect. The Committee asks that the next report provide up-to-date information on the framework for immigration and emigration, and any new or continued policy initiatives.

The Committee notes that it has previously assessed the policy and legal framework relating to migration matters (see for detailed description [Conclusions 2011](#)) and found it to be in conformity with the 1961 Charter. The report submits information on amendments in 2016 to the Law on foreigners, and the Law on border control, rulling, inter alia, on the cooperation of the structures of the Ministry of Interior and the Labour Inspectorate on the procedures for treatment of foreign citizens with regular residence in Albania. The relevant amendments concerned, in particular, visa procedures and boarder controls and were aimed at prevention of irregular migration.

Free services and information for migrant workers

The Committee recalls that this provision guarantees the right to free information and assistance to nationals wishing to emigrate and to nationals of other States Parties who wish to immigrate (Conclusions I (1969), Statement of Interpretation on Article 19§1). Information should be reliable and objective, and cover issues such as formalities to be completed and the living and working conditions they may expect in the country of destination (such as vocational guidance and training, social security, trade union membership, housing, social services, education and health) (Conclusions III (1973), Cyprus).

The Committee considers that free information and assistance services for migrants must be accessible in order to be effective. While the provision of online resources is a valuable service, it considers that due to the potential restricted access of migrants, other means of information are necessary, such as helplines and drop-in centres (Conclusions 2015, Armenia).

The Committee has assessed this point in its previous conclusion ([Conclusions 2011](#)) and found it to be in conformity with the 1961 Charter. It asked for examples of implementation of the relevant legal framework. In reply, the report provides that practical measures were laid down in, in particular, the Action Plan of the Strategy on Reintegration of Returned Albanian Citizens 2010-2015. The Strategy defined the reintegration mechanisms that addressed the needs of Albanian citizens returned voluntarily, to ensure a the support of the reintegration process.

Replying to the Committee's request for detailed information, the report specifies that thirty-six Migration One-Stop-Shops were established all over the country in regional and local employment offices and have the duty to inform Albanian citizens who want to emigrate for employment purposes and Albanian nationals who return from emigration to facilitate their reintegration in the country after they return. Migration OneStop-Shops interview the returned Albanian citizens, provide information on public and private services in accordance with the

needs identified and refer to public and private services, as well as specific civil society projects.

Information is also provided, mainly in the form of leaflets and posters, at border crossing points and during the interview of persons readmitted from other countries, in view of the reintegration of returnees.

The Committee considers that the situation is in conformity with the Charter on this point

Measures against misleading propaganda relating to emigration and immigration

The Committee recalls that measures taken by the government should prevent the communication of misleading information to nationals leaving the country and act against false information targeted at migrants seeking to enter (Conclusions XIV-1 (1998), Greece).

The Committee considers that in order to be effective, action against misleading propaganda should include legal and practical measures to tackle racism and xenophobia, as well as women trafficking. Such measures, which should be aimed at the whole population, are necessary inter alia to counter the spread of stereotyped assumptions that migrants are inclined to crime, violence, drug abuse or disease (Conclusion XV-1 (2000), Austria).

The Committee recalls that statements by public actors are capable of creating a discriminatory atmosphere. Racist misleading propaganda indirectly allowed or directly emanating from the state authorities constitutes a violation of the Charter (Centre on Housing Rights and Evictions (COHRE) v Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010). The Committee stresses the importance of promoting responsible dissemination of information, and of deterring the promulgation of discriminatory views.

The Committee recalls that in order to combat misleading propaganda, there must be an effective system to monitor discriminatory, racist or hate-inciting speech, particularly in the public sphere.

The Committee recalls that the authorities should take action against misleading propaganda as a means of preventing illegal immigration and trafficking in human beings (Conclusions 2006, Slovenia).

The Committee recalls that States must also take measures to raise awareness amongst law enforcement officials, such as awareness training of officials who are in first contact with migrants.

The report does not address these issues. In particular, no reply was provided to the Committee's questions about measures taken to fight against misleading propaganda in relation to migrant workers, measures to tackle racism and xenophobia or on awareness-raising targeted to police forces or social servants (see questions in [Conclusions 2006](#) and 2011). No information is provided on combating hate speech or human trafficking and on relevant monitoring systems.

The Committee recalls its questions and underlines that should the next report not provide comprehensive information in this respect, there will be nothing to show that the situation is in conformity with the Charter on this point.

Conclusion

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

Article 19 - Right of migrant workers and their families to protection and assistance
Paragraph 2 - Departure, journey and reception

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

Immediate assistance offered to migrant workers

This provision obliges States to adopt special measures for the benefit of migrant workers, beyond those which are provided for nationals to facilitate their departure, journey and reception (Conclusions III (1973), Cyprus).

Reception means the period of weeks which follows immediately from the migrant workers' arrival, during which migrant workers and their families most often find themselves in situations of particular difficulty (Conclusions IV, (1975) Statement of Interpretation on Article 19§2). It must include not only assistance with regard to placement and integration in the workplace, but also assistance in overcoming problems, such as short-term accommodation, illness, shortage of money and adequate health measures (Conclusions IV (1975), Germany). The Charter requires States to provide explicitly for assistance in matters of basic need, or demonstrate that the authorities are adequately prepared to afford it to migrants when necessary (Conclusions XX-4 (2015), Poland).

The Committee also reiterates that equality in law does not always and necessarily ensure equality in practice. Additional action becomes necessary owing to the different situation of migrant workers as compared with nationals (Conclusions V (1977), Statement of Interpretation on Article 19).

In its previous conclusion ([Conclusions 2011](#)) the Committee found the situation to be in conformity with the Charter. It asked for figures and/or concrete examples on the implementation of the relevant legal framework in relation to both emigrant and immigrant workers.

The report provides detailed information on the implementation of the Strategy of Reintegration of Returned Albanian Citizens 2010-2015. It lists numerous services and assistance offered to returnees; from transportation services, accommodation and emergency assistance in form of food, water and medicine. Returned Albanian citizens are interviewed on their needs for reintegration and are provided with information and orientation towards governmental or non-governmental structures.

The report further provides extensive statistics on returnees and foreigners in Albania, indicating that foreigners constitute about 0.4% of the population. On the other hand, 86,500 returned Albanian citizens benefited from assistance in food, shelter and healthcare in the period 2010-2015.

The Committee acknowledges that Albania is predominantly an emigration country and views positively the scale of assistance offered to citizens who wish to return. It also notes from previous report that emergency assistance is likewise provided free of charge for nationals and immigrant workers. The Committee asks the next report that migrant workers in Albania benefit from similar level of assistance, in particular, as regards equal access to health care.

Services during the journey

As regards the journey, the Committee recalls that the obligation to "provide, within their own jurisdiction, appropriate services for health, medical attention and good hygienic conditions during the journey" relates to migrant workers and their families travelling either collectively or under the public or private arrangements for collective recruitment. The Committee considers that this aspect of Article 19§2 does not apply to forms of individual migration for which the state is not responsible. In such cases, the need for reception facilities would be all the greater (Conclusions V (1975), Statement of Interpretation on Article 19§2).

The Committee notes that no large scale recruitment of migrant workers has been reported in the reference period. It asks what requirements for ensuring medical insurance, safety and social conditions are imposed on employers, shall such recruitment occur, and whether there is any mechanism for monitoring and dealing with complaints, if needed.

The Committee also asks the next report to provide information on the health services available to transit migrants.

Conclusion

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

Article 19 - Right of migrant workers and their families to protection and assistance
Paragraph 3 - Co-operation between social services of emigration and immigration states

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

The Committee recalls that the scope of this provision extends to migrant workers immigrating as well as migrant workers emigrating to the territory of any other State. Contacts and information exchanges should be established between public and/or private social services in emigration and immigration countries, with a view to facilitating the life of emigrants and their families, their adjustment to the new environment and their relations with members of their families who remain in their country of origin (Conclusions XIV-1 (1998), Belgium).

It also recalls that formal arrangements are not necessary, especially if there is little migratory movement in a given country. In such cases, the provision of practical co-operation on a needs basis may be sufficient. Whilst it considers that collaboration among social services can be adapted in the light of the size of migratory movements (Conclusions XIV-1 (1996), Norway), it holds that there must still be established links or methods for such collaboration to take place.

The co-operation required entails a wider range of social and human problems facing migrants and their families than social security (Conclusions VII, (1981), Ireland). Common situations in which such co-operation would be useful would be for example where the migrant worker, who has left his or her family in the home country, fails to send money back or needs to be contacted for family reasons, or where the worker has returned to his or her country but needs to claim unpaid wages or benefits or must deal with various issues in the country in which he was employed (Conclusions XV-1 (2000), Finland).

The Committee has examined the situation in Albania twice, in 2006 ([Conclusions 2006](#)) and 2011 ([Conclusions 2011](#)), and could not reach its conclusion, as the report lacked comprehensive information on cooperation between social services of emigration and immigration states.

The report provides that the State Social Service cooperates with the State Police as regards the reception of unaccompanied children returned from other countries. In the field of social insurance, bilateral agreements were ratified with a number of countries and further agreements are underway.

While positive, this information cannot yet be regarded as sufficient to enable the Committee to comprehensively assess the situation under Article 19§3 of the Charter. To this aim, the Committee needs to know, in particular:

- the form and nature of contacts and information exchanges established by social services in emigration and immigration countries;
- measures taken to establish such contacts and to promote the cooperation between social services in other countries;
- international agreements or networks, and specific examples of cooperation (whether formal or informal) which exist between the social services of the country and other origin and destination countries;
- whether the cooperation extends beyond social security alone (for example in family matters);
- examples of cooperation at a local level and any instances where such cooperation has occurred.

The Committee also notes from the International Organisation for Migration (IOM) reports that Albania is predominantly an emigration country. It requests information to be included in the next report on the assistance offered to returning migrants.

The Committee asks the next report to provide detailed reply to these questions. In the meantime, in the absence of information on these issues, the Committee finds that it has not

been demonstrated that the cooperation between social services is in line with the requirements of Charter.

Conclusion

The Committee concludes that the situation in Albania is not in conformity with Article 19§3 of the Charter on the ground that it has not been established that the cooperation between social services in emigration and immigration countries is sufficient.

Article 19 - Right of migrant workers and their families to protection and assistance
Paragraph 4 - Equality regarding employment, right to organise and accommodation

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

Remuneration and other employment and working conditions

The Committee recalls that States are obliged to eliminate all legal and de facto discrimination concerning remuneration and other employment and working conditions, including in-service training, promotion, as well as vocational training (Conclusions VII (1981), United-Kingdom). The legal framework in this respect has been assessed in the previous conclusion ([Conclusions 2011](#)). The report confirms that foreign migrant workers are granted the same rights as Albanian workers. The legislation prohibits any economic and legal discrimination. However, the report fails to respond to the Committee's repeated request to provide a description of the situation in practice, including information on the measures taken to implement the relevant legal framework. In the light of the lack of this essential information the Committee has already had to defer its conclusion in 2006 (see [Conclusions 2006](#)). The Committee recalls that it is not enough for a government to demonstrate that no discrimination exists in law alone but also that it is obliged to demonstrate that it has taken adequate practical steps to eliminate all legal and de facto discrimination concerning the rights secured by Article 19§4 of the Charter (Conclusions III (1973), Statement of interpretation). Furthermore, the report does not explicitly confirm that migrant workers access enjoy equal access to vocational guidance and training, skills development and retraining. Accordingly, it concludes that it has not been demonstrated that the situation in in conformity with the Charter in this respect.

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

The Committee recalls that this sub-heading requires States to eliminate all legal and de facto discrimination concerning trade union membership and as regards the enjoyment of the benefits of collective bargaining (Conclusions XIII-3 (1995), Turkey). This includes the right to be founding member and to have access to administrative and managerial posts in trade unions (Conclusions 2011, Statement of interpretation on Article 19§4(b)).

The report confirms that according to the provisions of the Constitution and the Labour Code, the foreign employees, who lawfully reside and work in Albania have the right to organize and join trade unions.

The Committee asks whether, similarly, migrant workers benefit on an equal footing from collective bargaining.

Accommodation

The Committee recalls that States shall eliminate all legal and de facto discrimination concerning access to public and private housing (European Roma Rights Centre (ERRC) v. France, Complaint No. 51/2008, decision on the merits of 19 October 2009, §§111-113). It also recalls that there must be no legal or de facto restrictions on home-buying (Conclusions IV (1975), Norway), access to subsidised housing or housing aids, such as loans or other allowances (Conclusions III (1973), Italy).

In reply to the Committee's query on this aspect (see Conclusions 2011), the report states that migrant workers benefit on the same conditions from social housing programmes, pursuant to the 2004 Law "On Social Housing Programs", as nationals. Furthermore, as regards the criteria for the selection of beneficiaries, migrant workers and returned migrants are given priority in the assessment system. The Committee asks for more information on the number of beneficiaries, the form and the scope of the state assistance in this respect.

Monitoring and judicial review

The Committee recalls that it is not enough for a government to demonstrate that no discrimination exists in law alone but also that it is obliged to demonstrate that it has taken adequate practical steps to eliminate all legal and de facto discrimination concerning the rights secured by Article 19§4 of the Charter (Conclusions III (1973), Statement of interpretation).

In particular, the Committee considers that in order to monitor and ensure that no discrimination occurs in practice, States Parties should have in place sufficient effective monitoring procedures or bodies to collect information, for example disaggregated data on remuneration or information on cases in employment tribunals (Conclusions XX-4 (2015), Germany).

The Committee further recalls that under Article 19§4(c), equal treatment can only be effective if there is a right of appeal before an independent body against the relevant administrative decision (Conclusions XV-1 (2000) Finland). It considers that existence of such review is important for all aspects covered by Article 19§4

The report does not address these issues, neither in this one nor in the previous report. The Committee recalls that states must show that the national situation is in conformity with the Charter and that in the event of repeated absence of information, it concludes that there is failure to comply.

Conclusion

The Committee concludes that the situation in Albania is not in conformity with Article 19§4 of the Charter on the ground that it has not been established that:

- the State has taken adequate practical steps to eliminate all legal and de facto discrimination concerning the rights secured by this provision,
- the right to equality regarding employment, right to organise and accommodation is subject to an effective mechanism of monitoring or judicial review.

Article 19 - Right of migrant workers and their families to protection and assistance
Paragraph 5 - Equality regarding taxes and contributions

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

It recalls that this provision recognises the right of migrant workers to equal treatment in law and in practice in respect of the payment of employment taxes, dues or contributions (Conclusions XIX-4 (2011), Greece).

The report states that there have been no changes to the legal framework which the Committee has previously considered to be in conformity with the Charter (Conclusions 2011). It provides information on further agreements with foreign States signed by the Albanian Government in order to avoid double taxation.

Conclusion

The Committee concludes that the situation in Albania is in conformity with Article 19§5 of the Charter.

Article 19 - Right of migrant workers and their families to protection and assistance
Paragraph 6 - Family reunion

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

Scope

This provision obliges States Parties to allow the families of migrants legally established in the territory to join them. The worker's children entitled to family reunion are those who are dependent and unmarried, and who fall under the legal age of majority in the receiving State. "Dependent" children are understood as being those who have no independent existence outside the family group, particularly for economic or health reasons, or because they are pursuing unpaid studies (Conclusions VIII (1984) Statement of Interpretation on Article 19§6).

The Committee refers to its previous conclusion ([Conclusions 2011](#)), in which it has assessed the scope of the right to family reunion and noted that family members of foreigners entitled to temporary residence, including minor children under 18 of either partner, spouses and parents, may joined them in Albania.

Conditions governing family reunion

The Committee recalls that a state must eliminate any legal obstacle preventing the members of a migrant worker's family from joining him (Conclusions II (1971), Cyprus). Any limitations upon the entry or continued present of migrant workers' family must not be such as to be likely to deprive this obligation of its content and, in particular, must not be so restrictive as to prevent any family reunion (Conclusions XVII-1 (2004), the Netherlands; Conclusions 2011, Statement of Interpretation on Article 19§6).

The Committee furthermore recalls taking into account the obligation to facilitate family reunion as far as possible under Article 19§6, States Parties should not adopt a blanket approach to the application of relevant requirements, so as to preclude the possibility of exemptions being made in respect of particular categories of cases, or for consideration of individual circumstances (Conclusions 2015, Statement of Interpretation on Article 19§6).

The Committee deferred its previous conclusion (Conclusions 2011), considering that it lacked some essential information to make a full assessment of the conformity of the situation with the Charter. It noted that a number of conditions are imposed by the law in relation to, inter alia, health insurance, accommodation and means. It recalled that the requirements of having sufficient or suitable accommodation and the level of means required by States to bring in the family or certain family members should not be so restrictive as to prevent any family reunion (Conclusions IV, Norway and Conclusions XIII-1, The Netherlands). In particular, the wording of paragraph 6 of Article 19 ("to facilitate ... the reunion of the family of a foreign worker") indeed appears to oblige a State which accepts it to take special steps to aid foreign workers to find accommodation, unless conditions on the housing market are such that no steps are necessary (Interpretative statement – Conclusions III, 1973). Furthermore, social benefits shall not be excluded from the calculation of the income of a migrant worker who has applied for family reunion (Conclusions 2011, Statement of Interpretation on Article 19§6). With this in mind, the Committee asked clarifications on how the relevant requirements for family reunion were applied.

In reply, the report provides that the applicant for a family reunion must ensure a normal accommodation according to the general standards of health and security and that the level of available means must be sufficient to prevent them from resorting to social aid scheme. The Committee considers that this information is still not sufficient. In particular, it is not clear what the minimum housing requirement means, whether applications have been rejected on this ground and how the state aids, shall a family fall short of the requirement. As to the means assessment, the Committee understands that social benefits are not included in the calculation

of the level of means required, which is not in conformity with the Charter. Accordingly, it considers that the situation is not in conformity with the Charter on this point.

Finally, the Committee recalls that once a migrant worker's family members have exercised the right to family reunion and have joined him or her in the territory of a State, they should have an independent right to stay in that territory (Conclusions XVI-1 (2002), Article 19§8, Netherlands). The Committee understands from the report that this is not the situation in Albania. Permanent stay may be granted in case the foreigner who applied for a family reunion passes or the matrimony ceases after lasting for minimum five years. The Committee also notes in this respect from the Migration Integration Policy Index (MIPEX) 2015 report on Western Balkans that immigrants have limited access to autonomous residence permits in case of widowhood, divorce or violence. The Committee therefore considers that the situation is not in conformity on this point.

Remedy

The Committee recalls that restrictions on the exercise of the right to family reunion should be subject to an effective mechanism of appeal or review, which provides an opportunity for consideration of the individual merits of the case consistent with the principles of proportionality and reasonableness (Conclusions 2015, Statement of Interpretation on Article 19§6).

The report does not provide any information on this matter. The Committee notes from the MIPEX 2015 report, cited above, the existence of discretionary procedures with many grounds for authorities to reject the family reunion application or withdraw their permit. Procedures that lack explicit rules give discretion to the administration and pose a risk of abuse, contrary to the rule of law principles. Furthermore, applicants are never fully prepared as they do not know what they will be asked during a procedure and can never feel secure in their status. The Committee asks the next report to comment on these observations and to provide comprehensive information on the mechanism of appeal or review. It considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation is in conformity with the Charter on this point.

Conclusion

The Committee concludes that the situation in Albania is not in conformity with Article 19§6 of the Charter on the grounds that:

- social benefits are not included in the calculation of the level of means required to bring in the family or certain family members;
- family members of a migrant worker are not granted an independent right to remain after exercising their right to family reunion;

Article 19 - Right of migrant workers and their families to protection and assistance
Paragraph 7 - Equality regarding legal proceedings

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

The Committee recalls that States must ensure that migrants have access to courts, to lawyers and legal aid on the same conditions as their own nationals (Conclusions 2015, Armenia).

It further recalls that any migrant worker residing or working lawfully within the territory of a State Party who is involved in legal or administrative proceedings and does not have counsel of his or her own choosing should be advised that he/she may appoint counsel and, whenever the interests of justice so require, be provided with counsel, free of charge if he or she does not have sufficient means to pay the latter, as is the case for nationals or should be by virtue of the European Social Charter. Whenever the interests of justice so require, a migrant worker must have the free assistance of an interpreter if he or she cannot properly understand or speak the national language used in the proceedings and have any necessary documents translated. Such legal assistance should be extended to obligatory pre-trial proceedings (Conclusions 2011, Statement of interpretation on Article 19§7).

In the previous conclusion ([Conclusions 2011](#)) the Committee positively assessed the fact that legal assistance is granted to Albanian nationals and foreigners on an equal basis and requested more detailed description of the relevant legal framework.

The report provides that the 2017 Law on state guaranteed legal aid stipulates that legal aid is accessible to all without any discrimination. It is granted in criminal cases, including in a pre-trial phase, when a defence lawyer is mandatory or the defendant has no sufficient financial means and requests a defence lawyer. The Committee asks about free interpretation and translation services in cases in which a defendant does not speak the language of the proceedings.

Finally, the Committee asks for more information on conditions for free legal aid and interpretation services in civil and administrative proceedings.

Conclusion

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

Article 19 - Right of migrant workers and their families to protection and assistance
Paragraph 8 - Guarantees concerning deportation

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

The Committee has interpreted Article 19§8 as obliging 'States to prohibit by law the expulsion of migrants lawfully residing in their territory, except where they are a threat to national security, or offend against public interest or morality' (Conclusions VI (1979), Cyprus). Where expulsion measures are taken they cannot be in conformity with the Charter unless they are ordered, in accordance with the law, by a court or a judicial authority, or an administrative body whose decisions are subject to judicial review. Any such expulsion should only be ordered in situations where the individual concerned has been convicted of a serious criminal offence, or has been involved in activities which constitute a substantive threat to national security, the public interest or public morality. Such expulsion orders must be proportionate, taking into account all aspects of the non-nationals' behaviour, as well as the circumstances and the length of time of his/her presence in the territory of the State. The individual's connection or ties with both the host state and the state of origin, as well as the strength of any family relationships that he/she may have formed during this period, must also be considered to determine whether expulsion is proportionate. All foreign migrants served with expulsion orders must have also a right of appeal to a court or other independent body (Statement of Interpretation on Article 19§8, Conclusions 2015).

The Committee has deferred its previous conclusion ([Conclusions 2011](#)), pending clarification of the time limits to exercise the right to appeal, rules governing expulsion of migrant worker's family members and statistics on reasons for expulsion orders.

The report states that in 2013 the Law on Foreigners was amended, aligning it with EU legislation. The Law regulates the entry, stay, and employment of foreigners in Albania. Pursuant to the Law, a preventive expulsion may only be issued if a person is considered to pose a threat to national security or public order or has been convicted for a criminal offence which is sentenced to a minimum of three years imprisonment. The Committee recalls that the presence on the territory of a state of a person who has committed an offence does not constitute, in itself, a threat to national security or an offence against public order or morals. Expulsion can only be justified under Article 19§8 only where certain elements reveal a real and serious threat. It asks whether expulsion is automatic in such cases or whether all aspects of the offender's behaviour, as well as other relevant circumstances are taken into account before a decision on expulsion is issued.

The report provides extensive details on the procedures governing the decision process and the right to appeal against an expulsion decision. The deadlines applicable are the same as in all civil and administrative proceedings. The Committee understands that, when deciding on an expulsion, all aspects and circumstances of each case are considered, as highlighted in the 2015 statement of interpretation, referred to above, and that the decisions are reasoned. It asks the next report to confirm that this is the case.

In reply to the request for statistical data on reasons for expulsion, the report submits that in the reference period subjects of deportation were predominantly persons found in irregular situations at the border or in the territory of Albania. A minor percentage of expelled persons were legal resident migrants who were found to exceed the length of stay, attempt illegal crossing of the state border, or considered a danger to national security and / or public order and security etc.

As regards the expulsion of migrant worker's family members, the Committee recalls at the outset that in its statement of interpretation on Article 19§6 and Article 19§8 (Statement of interpretation Article 19§6 and Article 19§8, Conclusions 2015), it considered that upon a proper construction of the text of the Charter, the possibility of the expulsion of the family members of a migrant worker is more properly dealt with under Article 19§6 on the facilitation of family reunion, rather than under Article 19§8 which concerns only the expulsion of a

migrant worker. It therefore decides henceforth to assess whether the expulsion of family members of a migrant worker is in conformity with the Charter under Article 19§6. For the purpose of assessment of the situation under this provision, the Committee understands from the Law on Foreigners, as amended, that the family members may poses independent residence right with no links with the original right of the migrant worker. It asks the next report to confirm that this is the case, in particular that an expulsion order is an individual measure which in principle should solely affect the migrant worker who has endangered national security or offended against public interest or morality.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Albania is in conformity with Article 19§8 of the Charter.

Article 19 - Right of migrant workers and their families to protection and assistance
Paragraph 9 - Transfer of earnings and savings

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

The Committee recalls that this provision obliges States Parties not to place excessive restrictions on the right of migrants to transfer earnings and savings, either during their stay or when they leave their host country (Conclusions XIII-1 (1993), Greece).

The Committee further notes that it previously addressed the legal framework relating to transfer of earnings and savings of migrant workers ([Conclusions 2011](#)) and found it to be in conformity with the requirements of the Charter.

The report confirms that pursuant to the Regulation on foreign exchange transactions, as amended in 2015, capital transfers may be carried out freely and without restrictions.

Referring to its Statement of Interpretation on Article 19§9 ([Conclusions 2011](#)), affirming that the right to transfer earnings and savings includes the right to transfer movable property of migrant workers, the Committee asks whether there are any restrictions in this respect in Albania.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Albania is in conformity with Article 19§9 of the Charter.

Article 19 - Right of migrant workers and their families to protection and assistance
Paragraph 10 - Equal treatment for the self-employed

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

On the basis of the information in the report the Committee notes that there continue to be no discrimination in law between migrant employees and self-employed migrants.

However, in the case of Article 19§10, a finding of non-conformity in any of the other paragraphs of Article 19 ordinarily leads to a finding of non-conformity under that paragraph, because the same grounds for non-conformity also apply to self-employed workers. This is so where there is no discrimination or disequilibrium in treatment.

The Committee has found the situation in Albania not to be in conformity with Articles 19§3, 19§4, 19§6 and 19§12. Accordingly, the Committee concludes that the situation in Albania is not in conformity with Article 19§10 of the Charter.

Conclusion

The Committee concludes that the situation in Albania is not in conformity with Article 19§10 of the Charter as the grounds of non-conformity under Articles 19§3, 19§4, 19§6 and 19§12 apply also to self-employed migrant workers.

Article 19 - Right of migrant workers and their families to protection and assistance
Paragraph 11 - Teaching language of host state

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

The Committee recalls that the teaching of the national language of the receiving state is the main means by which migrants and their families can integrate into the world of work and society at large. States should promote and facilitate the teaching of the national language to children of school age, as well as to the migrants themselves and to members of their families who are no longer of school age (Conclusions 2002, France).

Article 19§11 requires that States shall encourage the teaching of the national language in the workplace, in the voluntary sector or in public establishments such as universities. It considers that a requirement to pay substantial fees is not in conformity with the Charter. States are required to provide national language classes free of charge, otherwise for many migrants such classes would not be accessible (Conclusions 2011, Norway).

The language of the host country is automatically taught to primary and secondary school students throughout the school curriculum but this is not enough to satisfy the obligations laid down by Article 19§11. The Committee recalls that States must make special effort to set up additional assistance for children of immigrants who have not attended primary school right from the beginning and who therefore lag behind their fellow students who are nationals of the country (Conclusions 2002, France).

The Committee notes that it has previously assessed the teaching of the national language to migrant workers and their families ([Conclusions 2011](#)) and found it to be in conformity with the requirements of the Charter. It acknowledged that out of 2% non-Albanian population, the majority still has Albanian as their mother tongue. Noting that the return migration constitutes the most significant migration flow, the Committee has positively assessed measures in place to teach Albanian to the children of returning migrants ([Conclusions 2006](#)).

The report specifies that foreign children registered with a kindergarten or school benefit from an additional "supplement for learning Albanian language" with an Albanian language teacher. It provides statistics on asylum children who were enrolled in various levels of education in 2017-2018. The Committee requests more detail on the arrangements of the additional Albanian language classes, as well as on the number of other children, apart from asylum seekers, who benefit from them.

The Committee notes from the data submitted that the asylum children are mainly enrolled in private schools or kindergartens and asks whether financial assistance is available for those who cannot afford to pay.

The report also specifies that courses of Albanian language for other family members of migrant workers are offered by the University of Tirana. The Committee asks what measures are taken to promote the teaching of the national language for adult migrants and how many of them benefit from language classes.

Conclusion

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

Article 19 - Right of migrant workers and their families to protection and assistance
Paragraph 12 - Teaching mother tongue of migrant

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

The Committee recalls that according to its case law, States must promote and facilitate, as far as practicable, the teaching in schools or other structures, such as voluntary associations, of those languages that are most represented among migrants within their territory. In practical terms, States should promote and facilitate the teaching of the mother tongue where there are a significant number of children of migrants who would follow such teachings (Conclusions 2011, Statement of interpretation on Article 19§12).

In its conclusion in 2006 (Conclusions 2006) the Committee noted the information that the vast majority of resident migrants in Albania have Albanian as their mother tongue. In order to fully assess the compliance with requirements of Article 19§12, the Committee asked whether there were other any other migrant groups. The report submitted in 2011 stated that some private schools and educational institutions offered schooling in foreign languages. Considering that the reply to its questions had not been provided, the Committee again asked for more detailed information about migrant groups (Conclusions 2011) and deferred its conclusions for a second time in a row. In the absence of a report, no conclusions were adopted in respect of Albania in the previous cycle (2015).

The present report does not submit any information with respect to Article 19§12. The Committee would again like to specify that for a comprehensive assessment of the situation under this provision, it needs, in particular, following detailed information:

- statistics on major migrant groups,
- whether any measures or projects have been put in place in the framework of the school system or other structures to provide education of migrants' mother tongue,
- whether the children of migrants have access to multilingual education and on what basis; what steps that government has taken to facilitate the access of migrants' children to these schools,
- whether any non-governmental organisations or other bodies, such as local associations, cultural centres or private initiatives that teach migrant workers' children the language of their country of origin, and whether they receive support.

The Committee regrets that over 13 years it could not yet assess the situation comprehensively. In the absence of information on these issues, the Committee finds that it has not been established that the right to teaching mother tongue of migrant is sufficiently guaranteed.

Conclusion

The Committee concludes that the situation in Albania is not in conformity with Article 19§12 of the Charter on the ground that it has not been established that the teaching of mother tongue is offered to migrant workers.