



November 2008

## **European Social Charter (revised)**

European Committee of Social Rights

Conclusions 2008 (ALBANIA)

Articles 1, 20, 24, and 25  
of the Revised Charter



## Introduction

The function of the European Committee of Social Rights is to assess the conformity of national law and practice with the European Social Charter and the Revised Charter. In respect of national reports, it adopts “conclusions” and in respect of collective complaints, it adopts “decisions”.

A presentation of this treaty as well as statements of interpretation formulated by the Committee figure in the General Introduction to the Conclusions<sup>1</sup>.

*The Revised European Social Charter was ratified by Albania on 14 November 2002. The time limit for submitting the 3<sup>rd</sup> report on the application of the Revised Charter to the Council of Europe was 31 October 2007 and Albania submitted it on 31 October 2007. On 12 February 2008, a letter was addressed to the Government requesting supplementary information regarding Articles 1§2 and 25. The Government did not submit any supplementary information.*

This report was the first under the new system for the submission of reports adopted by the Committee of Ministers.<sup>2</sup> It concerned the accepted provisions of the following articles belonging to the first 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),
- right of workers to the protection of claims in the event of insolvency of the employer (Article 25).

Albania has accepted these articles with the exception of Articles 9, 10, 15 and 18.

The applicable reference period was 1 January 2005 – 31 December 2006.

The present chapter on Albania concerns 7 situations and contains:

- no conclusions of conformity
- 1 conclusion of non-conformity: Article 24.

In respect of the 6 other situations concerning Articles 1§1, 1§2, 1§3, 1§4, 20 and 25, the Committee needs further information. The Government is therefore invited to provide this information in the next report on the articles/provisions in question.

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<sup>1</sup> The conclusions as well as state reports can be consulted on the Council of Europe’s Internet site ([www.coe.int/socialcharter](http://www.coe.int/socialcharter)).

<sup>2</sup> Decision adopted at the 963rd meeting of the Ministers’ Deputies on 3 May 2006.

The next Albanian report deals with the accepted provisions of the following articles belonging to the second thematic group “Health, social security and social protection”:

- the right to safe and healthy working conditions (Article 3),
- the right to protection of health (Article 11),
- the right to social security (Article 12),
- the right to social and medical assistance (Article 13),
- the right to benefit from social welfare services (Article 14),
- the right of elderly persons to social protection (Article 23),
- the right to protection against poverty and social exclusion (Article 30).

The deadline for the report was 31 October 2008.

## **Article 1 – Right to work**

### *Paragraph 1 – Policy of full employment*

The Committee takes note of the information provided in Albania's report.

#### *Employment situation*

The Committee notes from Eurostat that the growth increased slightly once again, from 5.71% in 2004 to 5.82% in 2005.

The employment rate was 49.7% in 2005, which was marginally lower than in the previous reference period but considerably lower than the EU-15 average (65.3% in 2005). It was also much higher at this time among men (60%) than women (38.8%).

As to unemployment, while still high, it fell a little over the same period, from 14.4% in 2004 to 14.1% in 2005.

The Committee asks for information on the long-term unemployed as a proportion of all unemployed and the youth unemployment rate (among 15-24 year-olds). In the absence of any information in the report, it asks again for the statistics on unemployment among persons with disabilities and minorities.

#### *Employment policy*

The Act No. 9570 of 3 July 2006 amending the 1995 Employment Act defines the main aim of all employment policies. Some of the main terms tied up with employment policy such as "jobseeker" and "employment services" were defined more clearly in the new Act. The Committee notes that there are local three-party councils comprising employees', employers' and government representatives, which are involved in the implementation of national employment policy.

Priority is given to active measures designed to help young people (aged 15 to 24). For instance, during the reference period, a new programme was launched to promote employment among young graduates through a six-month work placement with a private company or a public service. A similar scheme was launched for young unemployed graduates in 2006.

The report does not detail active measures relating to all vulnerable groups and fails to answer the questions put by the Committee in its previous conclusion (Conclusions 2006).

The Committee therefore asks again for the next report to answer the following questions:

- how many participants in active measures are there?
- how much time elapses on average between a person registering as unemployed and receiving an offer of participation in an active measure?

It also wishes to know what measures are specifically aimed at the long-term unemployed. The Committee asks for the next report to give the figure for total expenditure on employment policies as a percentage of GDP, specifying what proportions are devoted to active and passive measures.

#### *Conclusion*

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

### *Paragraph 2 – Freely undertaken work (non-discrimination, prohibition of forced labour, other aspects)*

The Committee takes note of the information provided in Albania's report.

It notes however that there are no answers in the report to any of the questions in its last conclusions, whether those directed specifically at Albania under Article 1§2 or the ones put to all the states party in the general introduction to Conclusions 2006.

It asks that the questions below be answered. The Committee underlines that if the next report does not provide the necessary information, nothing will demonstrate that the situation of Albania is in conformity with Article 1§2.

#### 1. Prohibition of discrimination in employment

The Committee recalls that under Article 1§2 legislation should prohibit discrimination in employment at least on grounds of race, ethnic origin, religion, disability, age, sexual orientation and political opinion (Conclusions 2006). Legislation should cover both direct and indirect discrimination. As regards indirect discrimination, the Committee recalls that Article E of the Revised Charter prohibits: “all forms of indirect discrimination. Such indirect discrimination may arise by failing to take due and positive account of all relevant differences or by failing to take adequate steps to ensure that the rights and collective advantages that are open to all are genuinely accessible by and to all” (Autism Europe v. France, Complaint No. 13/2000, decision on the merits of 4 November 2003, §52).

Article 9 of the Albanian Labour Code prohibits discrimination in employment on grounds of race, colour of skin, sex age, religion, political beliefs, nationality, social origin, family relations or physical and mental disabilities. Differences, distinctions, exclusions or preferences required by a particular occupation are not considered to constitute discrimination.

As Albania, has accepted Article 20 of the Revised Charter, equality in employment between men and women is examined under this provision.

A breach of the non-discrimination principle as laid down in Article 9 of the Labour Code is punishable by a fine amounting to 50 times the monthly minimum wage (Article 202 of the Labour Code). Article 201 of the Labour Code provides for damages to be paid to employees whose rights have been violated.

The Committee recalls that in order to enable effective access to justice domestic law must provide for the sharing of the burden of proof to the benefit of the plaintiff in cases of alleged discrimination

Further the Committee recalls that under Article 1§2 of the Revised Charter remedies available to victims of discrimination must be adequate, proportionate and dissuasive. It therefore considers that the imposition of predefined upper limits to compensation that may be awarded not to be in conformity with the Revised Charter as in certain cases that may preclude damages from being awarded which are commensurate with the loss and damage actually sustained and may not be sufficiently dissuasive for the employer.

In order to assess the situation, and since the report does not answer these questions, the Committee asks again:

- whether discrimination on grounds of sexual orientation is prohibited;
- information on exemptions to the rules which are permitted for genuine occupational requirements, examples of the occupations concerned;
- how the concept of discrimination both direct and indirect has been interpreted by the courts,
- how discrimination on grounds of age has been interpreted;
- whether, in respect of discrimination on grounds of disability the requirement of ‘reasonable accommodation’ has been adopted.
- the number of cases alleging discrimination brought before the courts, as well as the number of findings of discrimination

- information on the procedure to be followed in cases alleging discrimination, for example whether there is an alleviation in the burden of proof?
- information on remedies i.e. reinstatement or damages that may be awarded to a victim of discrimination and confirmation that there are no pre-defined limits to the amount of damages that may be awarded;
- information on the right of associations, organisations or other legal entities, to obtain a ruling that the prohibition of discrimination has been violated in the employment context;
- information on a specific independent body to promote equal treatment.

The Committee considers that non-discrimination legislation can only be truly effective if it forms part of a broader strategy on equality and asks again for information on measures taken to promote equality in employment.

As regards discrimination in employment on grounds of nationality the Committee recalls again that under Article 1§2 of the Revised Charter while it is possible for states to make foreign nationals' access to employment on their territory subject to possession of a work permit, they cannot ban nationals of States Parties, in general, from occupying jobs for reasons other than those set out in Article G; restrictions on the rights guaranteed by the Revised Charter are admitted only if they are prescribed by law, serve a legitimate purpose and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health or morals. The only jobs from which foreigners may be banned therefore are those that are inherently connected with the protection of the public interest or national security and involve the exercise of public authority. The Committee asks whether and if so, what categories of employment are closed to non-nationals.

## 2. Prohibition of forced or compulsory work

Article 8 of the Labour Code prohibits compulsory labour. The ban on forced labour does not apply to compulsory military service and requisitioning in times of war, natural disasters or other situations threatening the life of the community or to work imposed by a court as a punishment where the individual is not put at the disposal of private persons or enterprises.

The Committee considers these exceptions are compatible with Article 1§2 of the Revised Charter but asks again whether there are other circumstances under Albanian law where workers may be required to undertake work without consent.

### *Prison work*

The Committee recalls that under Article 1§2 of the Revised Charter, prison work must be strictly regulated in terms of pay working hours etc., particularly if prisoners are working in private enterprises. Prisoners may only work in private enterprises with their consent and under conditions as similar as possible to those normally associated with an employment relationship (Conclusions XVI-1, Germany).

In order to assess the situation, the Committee invites again the Government to reply to its question in the General Introduction to Conclusions 2006 on prison work:

- Can a prisoner be required to work (irrespective of consent):
    - A. for a private undertaking/enterprise
      - i) within the prison?
      - ii) outside the prison?
    - B. for a public/state undertaking
      - i) within the prison?
      - ii) outside the prison?
  - What types of work may a prisoner be obliged to perform?
  - What are the conditions of employment and how are they determined?
3. Other aspects of the right to earn one's living in an occupation freely entered upon

#### *Privacy at work*

The Committee asks for information to enable it to determine how far human freedom and dignity are protected by legislation and the courts against intrusions into personal or private life that may be associated with or result from the employment relationship (see observations on Article 1§2, general introduction to Conclusions 2006, §§13-21).

#### *Restrictions linked to the fight against terrorism*

The Committee invites again the Government to reply to its question in the General Introduction to Conclusions 2006 as to whether a legislation against terrorism exist and whether it precludes persons from taking up certain employment.

#### *Part time work*

The Committee recalls that in order to be in conformity with Article 1§2 of the Revised Charter, part time work must be accompanied by adequate legal safeguards. In particular there must be rules to prevent non-declared work through overtime, and rules to ensure equal pay, in all its aspects between part time and full time workers (Conclusions XVI-1, Austria).

Since the report does not address this, the Committee asks again for information on this issue.

#### *Conclusion*

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

#### *Paragraph 3 – Free placement services*

The Committee takes note of the information provided in Albania's report.

It notes that Act No. 9570 of 3 July 2006 amending the 1995 Employment Act introduced the concept in the labour market of "access to public employment services". One of its other main aims was to improve mediation with jobseekers. The Committee asks to be informed of the outcome of its implementation, particularly with regard to the placement of jobseekers.

The report does not answer the questions put by the Committee in its previous conclusion (Conclusions 2006). It emphasises that this information is essential for it to assess the true effectiveness of the public employment services. Accordingly, it asks for the next report to answer the following questions:

- what is the placement rate – that is placements made by the public employment services as a percentage of the total number of persons recruited on to the labour market?
- how long does it take on average to fill a vacancy?
- what percentage of the market do the public employment services cater for – in other words how many placements does it make compared to total recruitments on the labour market?

The number of public employment services did not change during the reference period. Previously, the Committee noted that in view of the large numbers of unemployed, the regional branches seemed to be understaffed. In the absence of any further information, it asks again whether it is intended to increase staff numbers in the public employment services. The Committee also asks how many staff there are at the vocational training offices.

Lastly, it asks for information on the results of co-ordination between public employment services and private agencies.

### *Conclusion*

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

#### *Paragraph 4 – Vocational guidance, training and rehabilitation*

The Committee takes note of the information provided in Albania's report.

Article 1§4 guarantees the right to vocational guidance, continuing vocational training for employed and unemployed persons and specialised guidance and training for persons with disabilities. States must provide these services, grant access to them to all those interested and ensure equality of treatment for nationals of other States Parties to the Charter and for persons with disabilities.

Article 1§4 is completed by Articles 9 (right to vocational guidance), 10§3 (right of adult workers to vocational training) and 15§1 (right of persons with disabilities to vocational guidance, education and training), which contain more specific rights to vocational guidance and training. However, Albania has not accepted these three provisions and the Committee assess the conformity of the situation under Article 1§4.

The Committee considers the following questions from the standpoint of Article 1§4:

- whether the labour market offers vocational guidance and training services for employed and unemployed persons and guidance and training aimed specifically at persons with disabilities;
- access: how many people make use of these services;
- the existence of legislation explicitly prohibiting discrimination on the ground of disability in the field of training.

### *Vocational guidance*

The vocational guidance system in Albania is governed by a number of statutes and more detailed provisions, such as the Education and Vocational Training Act, No. 8872 of 29 March 2002, and the directive on guidance in vocational training.

Under Employment Act No. 7995 of 20 September 1995, the work of the employment services includes providing vocational guidance with the aim of helping unemployed people to choose appropriate jobs while taking account of their individual skills and the needs of the labour market. This guidance is provided free of charge by the national employment office, which has specialised qualified staff for the job. During the reference period, 36 employment offices provided services throughout the country, with 12 operating

at regional level and 24 at local level. In 2007, some 1 500 unemployed people were offered some form of vocational guidance.

The Committee would like the next report to provide more detailed information on the organisation and staffing of the bodies offering vocational guidance. It would also like to know what provision is made for vocational guidance for persons with disabilities.

#### *Continuing vocational training*

The report supplied no information on continuing training. It merely referred to the lack of any real continuing vocational training facilities for the staff of training institutions. The Committee asks again for information on continuing vocational training for workers and unemployed persons. It also asks whether Education and Vocational Training Act No. 8872 of 2002 has provisions on continuing vocational training.

In the absence of any reply in the report, the Committee asks again approximately how many training placements or courses are on offer and how many people have taken part in continuing training so that it can determine whether supply meets demand for training. In cases where companies organise training courses, it asks whether employees' training costs are covered by the company or the trainees.

#### *Guidance, education and training for persons with disabilities*

There was no information on the subject in the report.

The Committee asks for detailed information on measures to provide persons with disabilities with education and vocational training on the job or, if this is not available, in specialist public or private institutions. It also asks how many persons benefit from these services.

Finally, it asks whether nationals of other states party lawfully residing and working in Albania enjoy equal treatment with regard to all of the issues considered under Article 1§4.

The Committee emphasises that if the next report does not provide all of the above requested information, there will be nothing to show that the situation in Albania is in conformity with Article 1§4 of the Revised Charter.

#### *Conclusion*

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

**Article 20 – The right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex**

The Committee takes note of the information provided in Albania's report.

It notes that the report contains no new information and no information in response to the Committee's previous questions (Conclusions 2006).

The Committee asks the next report to provide all the necessary information, otherwise there will be nothing to show that the situation is in conformity with Article 20 of the Revised Charter.

*Conclusion*

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

## **Article 24 – Right to protection in cases of termination of employment**

The Committee takes note of the information provided in Albania's report.

### *Scope*

The Committee noted in its previous conclusion (Conclusions 2007) that employees on probation (trial period) which lasts a maximum of three months may be dismissed with 5 days' notice.

### *Obligation to provide a valid reason for termination of employment*

The Committee previously examined the reasons for termination of employment as stipulated in the Labour Code and raised a number of questions to which the report does not provide any response and which are therefore reiterated in the following. It points out that should the next report not provide the requested information, nothing will establish that the situation is in conformity with Article 24 on these points.

The Committee had found in its previous conclusion that the Labour Code appears not to provide that a dismissal with notice must be based on reasons connected with the employee's capacity, conduct or based on the occupational requirements of the undertaking and that the employer is permitted to dismiss an employee for reasons which go beyond those permitted by Article 24 of the Revised Charter. It reiterates its request for full information on all grounds on which an employer may terminate a contract of employment with notice.

The Committee had further noted that Section 153 of the Labour Code permits the employer to terminate a contract of employment without notice for "grounded reasons" which relate to the conduct of the employee. Paragraph 3 of Section 153 states that it is for the court to decide whether there has been reasonable cause for the immediate termination of the employment contract, and that reasonable cause will be considered only in such cases where the employee breaches the contractual obligations in a serious manner or where the employee repeatedly violated the contractual obligations despite being warned.

The Committee reiterates its request for a summary of pertinent case law showing how the aforementioned grounds for termination are interpreted by the competent courts in practice. In this context it would also like to know under which conditions an employee may be made redundant for economic reasons and whether courts are empowered to review the facts underlying the economic reasons invoked by the employer in case of a dismissal.

The Committee asks how retirement ages (mandatory retirement ages set by statute, contract or through collective bargaining) and pensionable age (age when an individual becomes entitled to a state pension) are fixed in Albania and what is the consequence on the employment relationship once an employee has reached retirement and/or pensionable age. The Committee reiterates in particular its question as to whether Albanian law allows for termination of the employment relationship on the grounds that an employee has reached the retirement age and as to whether there are specific procedures to be followed or conditions to be fulfilled once an employee reaches the retirement age or whether contracts of employees who reach this age are automatically terminated.

The Committee holds that dismissal on the grounds of age will not constitute a valid reason for termination of employment unless a termination is, within the context of national law, objectively and reasonably justified by a legitimate aim such as legitimate employment policy, labour market objectives or the operational requirements of the undertaking, establishment or service and provided that the means of achieving that aim are

appropriate and necessary. It wishes the next report to provide information on whether and how the legal framework complies with this approach.

### *Prohibited dismissals*

The Committee asked for the rules applying to protection of employees against retaliatory dismissal in the event they turn to the courts or another competent authority to enforce their rights as well as in the event of temporary absence from work due to illness or injury.

The Committee notes from Section 146 para 1 of the Labour Code that a dismissal is considered unlawful, *inter alia*, in the event the employee has claims resulting from the employment relationship or on the ground that he/she exercises a constitutional right.

Section 147 para 1 of the Labour Code stipulates that an employer may not terminate an employment contract where an employee has a statutory right to claim payments from the employer or the Social Insurance related to his/her temporary disability to work for a period of up to one year. The Committee asks the next report to provide further information under which conditions an employee qualifies for such claims. It repeats its question concerning retaliatory dismissal;

### *Remedies and sanctions*

It appears from Sections 146 and 153 of the Labour Code that an employee may in any event have recourse to the courts when he/she considers a dismissal to be unlawful and the Committee asks what are the competent courts in this respect.

The report states that in the event of a court proceeding regarding unfair dismissals, the burden of proof lies with the employee. The Committee holds that in such proceedings the burden of proof should not rest entirely on the complainant, but should be the subject of an appropriate adjustment between employee and employer. It asks the next report to specify whether Albanian law provides for such an adjustment.

Pursuant to Section 146 para 3 of the Labour Code the termination of an employment contract in violation of this provision shall be invalid and the employer shall be under an obligation to pay the employee compensation up to a maximum amount of one year's salary. In the event the dismissal of an employee in public administration has been declared unlawful, the court may also order reinstatement.

The Committee asks the next report to answer whether courts may only order reinstatement in the event of an unfair dismissal of employees other than civil servants.

Pursuant to the said provisions, compensation in the event of unfair dismissal appears to be limited to an amount equal to the wage of one year plus the wage an employee would be entitled to during the termination notice deadline. The Committee holds that Article 24 of the Revised Charter requires that courts or other competent bodies are able to order adequate compensation, reinstatement or other appropriate relief. In order to be considered appropriate, compensation should include reimbursement of financial losses incurred between the date of dismissal and the decision of the appeal body ruling on the lawfulness of the dismissal, the possibility of reinstatement and/or compensation sufficient both to deter the employer and proportionate to the damage suffered by the victim. It finds the situation in Albania not to be in conformity with the Revised Charter in this respect.

### *Conclusion*

The Committee concludes that the situation in Albania is not in conformity with Article 24 of the Revised Charter on the ground that the compensation for unlawful termination of employment is subject to a maximum of one year's wages.

## **Article 25 – The right of workers to the protection of their claims in the event of the insolvency of their employer**

The Committee takes note of the information provided in Albania's report.

The current report is simply a partial repeat of what appeared in the previous report and therefore fails to answer the questions in Conclusions 2007. Before returning to these questions, reference should be made to the case-law on the protection of claims in the event of employers' insolvency and the relevant national regulations.

States that have accepted Article 25 benefit from a margin of appreciation as to the form of protection of workers' claims, so long as the protection is adequate and effective, and includes situations where the employer's assets are insufficient to cover salaries owed or to justify the opening of formal insolvency proceedings (Conclusions France, 2003). To show that the protection is adequate, states must indicate the period that elapses from when claims are lodged to when payments are made and the overall proportion of workers' claims that are satisfied (Conclusions Sweden, 2003). Protection must at least extend to wages, and sums due for paid holidays and other paid absences, relating to a specific period. States may limit protection of these sums owed to a specified amount (Conclusions 2005, Estonia), so long as this is at a socially acceptable level. In exceptional cases, certain categories of employee may be excluded from the scope of Article 25 protection.

The Committee takes note of the definition of insolvency given by Article 124 of the Labour Code. It however asks for detailed information on rules and procedures governing insolvency in the next report. The Committee also asks whether employee protection also applies when businesses cease trading without being able to honour their commitments but have not been formally declared insolvent nor placed in receivership.

There is no legal provision for a specific guarantee institution. However, employers' obligations to their employees up to not less than 5 months' minimum wage have priority over all other obligations. The Committee notes that these are not suspended by bankruptcy proceedings. It infers from this that in respect of at least part of what they are owed employees take precedence over all other creditors, including those that take priority in bankruptcy proceedings. The Committee requests confirmation of this assumption. It again wishes to obtain detailed statistics on average and minimum wages in the next report. Finally, the Committee repeats its questions in the last conclusions:

- What is the normal or average time from when claims are lodged to when payments are made?
- What types of workers' claims are protected under the terms of their employment relationship in the event of employers' insolvency?
- Are part-time employees, employees on fixed-term contracts and persons on temporary contracts also covered by the law in force?

The Committee points out that if the next report does not provide the necessary information, there will be nothing to show that the situation in Albania is in conformity with Article 25.

### *Conclusion*

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