



International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

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Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families

Thirteenth session

22 November to 3 December 2010

Consideration of reports submitted by State parties under article 74 of the Convention

Concluding observations of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families

Albania

1. The Committee considered the initial report of Albania (CMW/C/ALB/1) at its 138th and 139th meetings (see CMW/C/SR.139. and SR.140), held on 22 and 23 November 2010, and adopted the following concluding observations at its 151st meeting, held on 1 December 2010.

A. Introduction

2. The Committee welcomes the receipt of the report as well as the written replies to the list of issues which enabled the Committee to gain a better understanding on the implementation of the Convention in the State party. The Committee also welcomes the constructive and fruitful dialogue initiated with a competent delegation. It regrets, however, that the report and the written responses do not contain sufficient information on several important questions of both a legal and practical nature.

3. The Committee recognizes that Albania is mainly known as a country of origin, with significant numbers of migrant workers, as well as a country of transit for migrant workers.

4. The Committee notes that some of the countries in which Albania migrant workers are employed are not yet parties to the Convention, which may constitute an obstacle to the enjoyment by those workers of the rights to which they are entitled under the Convention.

* Reissued for technical reasons on 24 February 2011.

B. Positive aspects

5. The Committee notes with appreciation that Albania piloted at its border points a unique pre-screening procedure, for migrants in an irregular situation, asylum-seekers, unaccompanied minors and victims of trafficking entering Albania. This procedure has been in place since 2004 and aims to improve the treatment of irregular migrants.
6. The Committee welcomes the efforts undertaken by the State Party to promote and protect the rights of Albania's migrant workers abroad, including:
 - (a) The National Strategy on Migration and National Action Plan on Migration;
 - (b) The Government Information and Communication Policy addressed to the Albanian Migrant Community abroad; and
 - (c) The establishment of Migrant Service Centers in all Regional Employment Offices.
7. The Committee also welcomes the binational institutional dialogue to pursue/renew labour agreements/protocols of implementation with Greece and Italy.
8. The Committee further welcomes the ratification of the following instruments:
 - (a) The Optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, in 2008;
 - (b) International Labour Organization (ILO) Conventions No. 97 on Migration for Employment (1949), in 2005; No.143 on Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (Supplementary Provisions), in 2006; No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999), in 2001;
 - (c) The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the Protocol against the Smuggling of Migrants By Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, in 2002.

C. Principal subjects of concern, suggestions and recommendations

1. General measures of implementation (arts. 73 and 84)

Legislation and application

9. The Committee notes that, according to the Constitution of Albania, international agreements ratified by law prevail over the domestic laws that are not compatible with it. However, in practice there is no guarantee of primacy of the Convention in case of conflict with national legislation.
10. **The Committee encourages the State party to take all necessary measures, including legislative measures, to harmonize its domestic legislation with the Convention. The State party should also take appropriate and effective steps to guarantee the application of the Convention in practice.**
11. The Committee regrets the lack of sufficient information on the legislation regulating migration, in particular on the Law on Migration of Albanian Nationals for Employment Purposes, and the law on Foreigners and on its implementation.

12. **The State party is invited to provide in its second periodic report effective information on the domestic legislation regulating migration, including on the Law on Migration of Albanian Nationals for Employment Purposes, and the Law on Foreigners, as well as concrete information on their implementation.**

13. The Committee notes that Albania has not yet made the declarations provided for in articles 76 and 77 of the Convention recognizing the competence of the Committee to receive communications from States parties and individuals.

14. **The Committee encourages the State party to consider making the declarations provided for in articles 76 and 77 of the Convention.**

Data collection

15. The Committee welcomes the information provided by the State party but regrets the paucity of information on migration flows and on other migration-related issues. While noting the difficulties faced by the State party in this regard, the Committee recalls that such information is indispensable to an understanding of the situation of migrant workers in the State party and to an assessment of the implementation of the Convention.

16. **The Committee encourages the State party to create a sound and coordinated database, in line with all aspects of the Convention, including reliable and updated systematic data - as disaggregated as possible - as a tool for effective migration policy and for the application of the various provisions of the Convention. When precise information is not available, for instance with respect to migrant workers in an irregular situation, the Committee would appreciate receiving data based on studies or estimated assessments.**

Training in and dissemination of the Convention

17. The Committee notes the information provided by the State party on training programmes on the Convention for relevant public officials, such as border police officers, migration officials and social workers. The Committee notes with concern that there is no information showing that the State party has taken measures to train judges and prosecutors on the Convention or to disseminate information and promote the Convention among all the relevant stakeholders, in particular civil society organizations.

18. **The Committee encourages the State party to intensify training for all officials working in the area of migration, in particular police and border personnel, judges, prosecutors, as well as officials at the local level dealing with migrant workers. It also encourages the State party to ensure continuous access by migrant workers to information about their rights under the Convention. In addition, the Committee encourages the State party to work with civil society organizations, in order to disseminate information and to promote the Convention.**

2. General principles (arts. 7 and 83)

Non-discrimination

19. The Committee is concerned at the information that migrant workers and members of their families may suffer from various forms of discrimination, in particular in the area of social security.

20. **The Committee encourages the State party to intensify its efforts:**

- (a) **To ensure that all migrant workers and members of their families within its territory or subject to its jurisdiction enjoy the rights provided for in the Convention without any discrimination, in conformity with article 7;**

- (b) **By promoting information campaigns for public officials working in the area of migration, especially at the local level,**

Right to an effective remedy

21. The Committee takes note of the information received from the State party that every individual, regardless of his or her nationality, has access to the courts of law and enjoys protection of the rights laid down in the legislation. The Committee is nevertheless concerned that migrant workers, irrespective of their legal status, have in practice limited access to justice, due to a lack of awareness concerning the administrative and judicial remedies that are available to them.

22. **The Committee encourages the State party to strengthen its efforts to inform migrant workers of the administrative and judicial remedies available to them and to address their complaints in the most appropriate manner. It recommends that the State party ensure that in legislation and in practice, migrant workers and members of their families, including those in an irregular situation, have the same rights as nationals of the State party to file complaints and to obtain effective redress before the courts, including the labour courts. It also encourages the State party to include in its next report to the Committee information on documented cases of direct application of the Convention by national tribunals and on the effects of the Convention.**

3. Human rights of all migrant workers and members of their families (arts. 8-35)

23. The Committee takes note of information that migrant workers and members of their families are entitled to lodge an appeal against an expulsion order with an administrative body – the Border and Migration Department in the Police Directorate General - and, if they do not agree with this decision, have the possibility to address the first instance court.

24. **The State party is invited to ensure that, pending such appeal, the person concerned shall have the right to seek a stay of the expulsion.**

25. The Committee notes that the law does not provide for a renewal of the residence permit to members of the family of a migrant worker in case of divorce or in case of death of the migrant worker.

26. **The State party is invited to ensure that the rights of the families of the deceased or divorced migrant worker are guaranteed in conformity with article 50 of the Convention.**

27. The Committee notes that the State party has not taken sufficient measures to protect the rights of Albanian citizens living abroad and regrets that despite a considerable emigrant population – close to one third of the working force - only one bilateral agreement has been signed concerning social security. The Committee also notes that several aspects of the legal and policy framework on migration would benefit from clarification.

28. **The Committee recommends that the State party reinforce its support for Albanian migrant workers abroad through:**

- (a) **Allocating sufficient funds to consulates and embassies to maintain appropriate services that provide assistance to Albanian migrant workers and their families;**
- (b) **Upholding efforts to have better figures on the number of migrant workers, their identity, location and occupations abroad to better manage provisions for their assistance and documentation,**
- (c) **Signing further bilateral agreements on social security,**

(d) **Clarifying the legal and policy framework on migration, including the respective responsibilities of various government entities, the contents of the system of state management of employment outside the country, the benefits flowing from the status of migrant and whether they are applicable to both “potential migrant workers” and “returning migrants”.**

29. With reference to article 26 of the Convention, the Committee is concerned at the fact that undocumented migrant workers and members of their families cannot join trade unions.

30. **The Committee recommends that the State party take the necessary measures, including legislative amendments, to guarantee to all migrant workers and members of their families the exercise of trade unions rights, in accordance with the Convention, as well as with ILO Convention No. 87 concerning Freedom of Association and Protection of the Right to Organise.**

4. Other rights of migrant workers and members of their families who are documented or in a regular situation (arts. 36-56)

31. The Committee is concerned that, according to article 11 of the Electoral Code, voters who live in another State have the right to vote only in the territory of the Republic of Albania. In the Committee’s view this provision negatively affects the exercise of the right to vote of migrant workers abroad.

32. **The Committee recommends that the State party harmonize the Electoral Code with the Convention and to continue its efforts with a view to ensure the exercise of voting rights by Albanian migrant workers residing abroad, in accordance with the Convention.**

5. Provisions applicable to particular categories of migrant workers and members of their families (arts. 57-63)

33. The Committee notes that there is no information relating to seasonal workers engaged in remunerated activities in the State Party, and of Albanian seasonal workers engaged in remunerated activities abroad.

34. **The Committee recommends that the State party take all necessary measures to follow up and report on the situation of seasonal workers.**

6. Promotion of sound, equitable, humane and lawful conditions in connection with international migration of workers and members of their families (arts. 64-71)

35. The Committee notes that the State Party has concluded readmission agreements with the European Union (EU) and with Switzerland, and has developed the Strategy for the reintegration of migrant workers returned from neighboring countries as well as its Action Plan approved by the State party in June 2010, to facilitate the regular return of the nationals working abroad and of members of their families. It is concerned, however, that these agreements do not include procedural guarantees for the migrants they cover.

36. **The Committee recommends that the State party, taking into account article 22 of the Convention, ensure that current and future readmission agreements and protocol agreements concluded between Albania and host countries include appropriate procedural guarantees for migrants and that it facilitate the voluntary return of migrant workers and members of their families as well as their durable social and cultural reintegration. The Committee additionally recommends to the State party to gather statistical data on migrants readmitted under readmission agreements, in particular who they are – Albanian citizens or third-country national.**

37. The Committee notes with concern the high number of Albanian children 17 years of age or less are living in households where one parent is not present owing to emigration.

38. **The Committee encourages the State party to study the impact of migration on children with the aim of developing adequate strategies to ensure that children of migrant workers enjoy full social protection.**

39. The Committee take note of the National Strategy adopted by Albania on combating trafficking in human beings and its National Action Plan, as well as the Cooperation Agreement to establish a national Referral Mechanism for the enhanced identification of and assistance to victims of human trafficking. However, it notes with deep concern that the State party has emerged as a country of origin, as well as a transit country, for persons trafficked for the purposes of sexual exploitation and forced labour, including women and children.

40. The Committee is equally concerned at information according to which police personnel and Government agents would be involved in the trafficking, and by the absence of efficient mechanisms to protect witnesses and victims.

41. The Committee, while acknowledging the adoption of the National Strategy and Plan of Action for the Fight Against Child Trafficking and the Protection of Child Victims of Trafficking, notes that children who fall victim to trafficking for labour exploitation remain a concern in the State Party. The Committee is particularly concerned at the fact that, until 2004, about 4,000 children had migrated unaccompanied by their parents.

42. **The Committee recommends that the State party:**

(a) **Evaluate the phenomenon of trafficking in persons and compile systematic disaggregated data with a view to better combating trafficking in persons, especially of women and children, and bringing perpetrators to justice;**

(b) **Allocate sufficient financial and human resources to implement national strategies to combat trafficking, including child trafficking;**

(c) **Apply measures, at the national and international levels, to dismantle trafficking networks;**

(d) **Increase its efforts to identify victims of trafficking, to enforce anti-trafficking laws, to train police forces, judges, prosecutors and social service providers, and to fund ambitious prevention of trafficking campaigns;**

(e) **Intensify efforts to determine the causes of massive departure of unaccompanied minors and to reduce the magnitude of this phenomenon;**

(f) **Define the crime of sale of children and to adopt laws on accessible procedures for victims of trafficking to obtain reparation; and**

(g) **Vigorously prosecute labour trafficking offenders and public officials who participate or facilitate human trafficking;**

43. The Committee notes with concern that the State party is considered to be a transit country for human smuggling.

44. **The Committee recommends that the State party intensify efforts to counter migrant-smuggling, especially women and children, inter alia by taking appropriate steps to detect the illegal or clandestine movement of migrant workers and their families and bring those responsible to justice.**

7. Follow-up and dissemination**Follow-up**

45. The Committee requests the State party to include in its second periodic report detailed information on measures taken to follow up on the recommendations made in these concluding observations. The Committee recommends that the State party should take all appropriate measures to ensure that these recommendations are implemented, including by transmitting them for consideration and action to members of the Government and parliament, as well as to local authorities.

46. The Committee encourages the State party to continue in the implementation of the Convention and to involve civil society organizations in the preparation of its second periodic report.

Dissemination

47. The Committee likewise requests the State party to disseminate these concluding observations widely, including to public agencies and the judiciary, non-governmental organizations and other members of civil society, and to take steps to make them known to Albania's migrants abroad and foreign migrant workers residing or in transit in Albania.

8. Next periodic report

48. The Committee requests the State party to submit its second periodic report not later than 1 November 2015.
