

INTERNATIONAL TRADE UNION CONFEDERATION (ITUC)

INTERNATIONALLY RECOGNISED CORE LABOUR STANDARDS IN ALBANIA

**REPORT FOR THE WTO GENERAL COUNCIL REVIEW OF THE
TRADE POLICIES OF ALBANIA
(Geneva, 28 and 30 April 2010)**

EXECUTIVE SUMMARY

Albania has ratified all eight core ILO labour Conventions. In view of the restrictions on trade union rights in Albania, determined measures are needed to comply with the commitments Albania accepted in the WTO Ministerial Declaration adopted at Doha in 2001, and in the ILO Declaration on Fundamental Principles and Rights at Work in 1998 and its Social Justice Declaration in 2008.

Albania has ratified both ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organise and Convention No. 98 on the Right to Organise and Collective Bargaining. Although the labour law does not contain many areas of serious concern in this regard, problems do exist. Whereas anti-union dismissals are prohibited by law, workers are not awarded effective protection in practice. The right to strike is restricted for civil servants in particular, who are not allowed to strike. While the law establishes procedures for collective bargaining agreements, however effective collective bargaining remains difficult.

Both ILO Convention No. 100 on Equal Remuneration and Convention No. 111 on Discrimination (Employment and Occupation) have been ratified. Despite equality in law, the principle of equal pay for work of equal value is not applied in practice and well-educated women are often underemployed or work outside their field of training. Women are particularly discriminated against in the northeast part of the country due to traditional social norms.

Albania has ratified ILO Convention No. 138 on the Minimum Age and Convention No. 182 on the Worst Forms of Child Labour. However, exploitation of children at work is a severe problem in Albania. The criteria for employment of persons under 18 are not well defined in the Labour Code. Child trafficking or child labour occur in extremely hazardous occupations in agriculture, construction, small shoe and clothing factories and the service sector and many children, many of them of Roma origin, work as shop vendors or beggars.

Albania has ratified both ILO Convention No. 29, the Forced Labour Convention and Convention No. 105 on the Abolition of Forced Labour. The law prohibits trafficking, forced and compulsory labour, including by children. However, trafficking for the purpose of forced labour still takes place and it is reported that women and girls are trafficked for commercial sexual exploitation.

INTERNATIONALLY RECOGNISED CORE LABOUR STANDARDS IN ALBANIA

Introduction

This report on the respect of internationally recognised core labour standards in Croatia is one of the series the ITUC is producing in accordance with the Ministerial Declaration adopted at the first Ministerial Conference of the World Trade Organisation (WTO) (Singapore, 9-13 December 1996) in which Ministers stated: "We renew our commitment to the observance of internationally recognised core labour standards." The fourth Ministerial Conference (Doha, 9-14 November 2001) reaffirmed this commitment. These standards were further upheld in the International Labour Organisation (ILO) Declaration on Fundamental Principles and Rights at Work adopted by the 174 member countries of the ILO at the International Labour Conference in 1998 and in the Declaration on Social Justice for a Fair Globalisation adopted unanimously by the ILO in 2008.

The main trade union centres in Albania include the two ITUC-affiliated organisations, namely the Confederation of the Trade Unions of Albania (KSSH) and the Union of the Independent Trade Unions of Albania (BSPSH). KSSH has a membership of 105,000 persons and BSPSH has a membership of 84,000 persons. There are also other national trade union centres in the country without international affiliation.

Albania is a member of the United Nations, NATO, the Organisation for Security and Co-operation in Europe, Council of Europe, World Trade Organisation and International Monetary Fund and it is one of the founding members of the Union for the Mediterranean. Albania has been a potential candidate for accession to the European Union since January 2003, and it formally applied for EU membership on 28 April 2009.

I. Freedom of Association and the Right to Collective Bargaining

Albania has ratified Convention No. 87 on Freedom of Association and Protection of the Right to Organise as well as Convention No. 98 on the Right to Organise and Collective Bargaining, both in 1957.

According to the Albanian Constitution and Labour Code, workers have the right to form and organise independent unions, and they exercise this right in practice. However, the law prohibits members of the military and senior government officials from joining unions. According to the labour code, a trade union must have at least 20 members in order to be registered. The law on the State Police allows the police to organise but not to affiliate to a national or international confederation, and does not prevent interference of the Internal Affairs Minister in the establishment and functioning of police trade unions.

The law does not prohibit antiunion discrimination, and there are many reports of such occurrences, particularly in the textile, garment, leather and footwear sector. It is reported that companies brandish the threat of international relocation if workers approach a union.

Whereas anti-union dismissals are prohibited by law, workers are not awarded effective protection as the burden of proof lies with the victim and reinstatement can only be ordered for public administration employees. The Council of Europe criticised this system as inadequate for preventing unfair dismissals. Employers who put pressure on workers not to join a union can face fines of up to 50 times the monthly minimum wage.

The right to bargain collectively at the enterprise and sector level is recognised by the Labour Code and the law establishes procedures for the protection of workers' rights through collective bargaining agreements. However, the ITUC Annual Survey of violations of trade union rights reports that effective collective bargaining remains difficult and that agreements are hard to enforce. The government has so far shown little willingness to promote collective bargaining at a national level. In some cases, the Minister of Labour may extend a sector-level collective agreement to all the employers in the sector concerned but that is rarely the case. If the parties fail to reach agreement, they may take advantage of mediation or arbitration procedures. Arbitration is compulsory in the essential services.

The right to strike is restricted. Civil servants, regardless of their function, are not allowed to strike. The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) has expressed concern about the fact that civil servants are not allowed to strike and that regulations giving them this right have not yet been approved.

Furthermore, solidarity strikes are only permitted where the employer of the strikers engaging in solidarity action has been actively supporting the other employer. The list of "essential services" where strikes are banned, i.e. indispensable medical and hospital services, water supply services, electricity supply services, air traffic control services, services of protection from fire as well as services at prisons, exceeds the ILO definition by including workers in the prison service. Also, if a strike is considered unlawful, the employer can order strikers to return to work within three days or face dismissal. The Council of Europe has criticised the general prohibition of strikes in the civil service and in electricity and water supply services.

Trade unions must ensure minimum services in sectors satisfying the "basic needs" of the population. If there is no agreement between the employer and trade union on the scope of minimum services, the solution is imposed by an arbitrator appointed by the Minister of Labour and Social Affairs. According to the Council of Europe, the circumstances in which recourse to compulsory arbitration is authorised are too broad.

The Labour Code provides for special arbitration tribunals and labour courts, but none have so far been established. Trade unions report that challenging trade union rights violations in civil courts takes around three years, due to the heavy workload of the courts.

In response to a complaint by the two ITUC affiliated organisations KSSH and BPSH, the ILO Committee on Freedom Association (CFA) asked the Albanian government to halt the passage of a draft law on the expropriation of trade unions' properties which essentially would nationalise trade union properties and assets. In effect, the impact would be to force the Albanian trade unions to relinquish their headquarters, resulting in immediate and massive damage to material property and documentation and significantly reducing their ability to operate. The KSSH and BPSH find the law on trade unions' assets contrary to the Constitution and to the provisions of Conventions 87 and 98 concerning protection of the assets of trade unions. However, despite the intervention of the CFA the bill on nationalisation of the assets of the Albanian trade unions was approved by the Parliament on

15 October 2009, prompting the EU Commissioner Olli Rehn to seek clarifications from the Albanian Ministry of Labour, Social Affairs and Equal Opportunities and also from the Ministry of Justice.

Conclusions:

Although the labour law does not contain many areas of serious concern, problems still exist. Workers are guaranteed freedom of association in the Constitution and the Labour Code, except for senior government officials. Whereas anti-union dismissals are prohibited by law, workers are not awarded effective protection. The right to strike is restricted and civil servants, regardless of their function, are not allowed to strike. The right to bargain collectively is recognised and the law establishes procedures for the protection of workers' rights through collective bargaining agreements, however effective collective bargaining remains difficult.

II. Discrimination and Equal Remuneration

Albania ratified Convention No. 100 on Equal Remuneration in 1957 and Convention No. 111 on Discrimination (Employment and Occupation) in 1997.

The law provides equal rights for men and women under family law, property law, and in the judicial system. In 2005, a new Law on Gender Equality that guarantees equal rights was promulgated. The Labour Code mandates equal pay for work of equal value, but this provision is not thoroughly implemented despite the fact that under section 4 of the Law, employers are required to ensure that their workers receive equal remuneration for work of equal value or to face penalties. In the education sector in particular, there are reports of discrimination with regard to remuneration of workers undertaking equal work that is defined as being of a different kind.

Though women are improving their position in the economy, well-educated women are often underemployed or work outside their field of training and are poorly represented at high levels in their fields.

The law prohibits sexual harassment; however, officials rarely enforce the law.

Under the Employment Promotion Act of 1995, the government set up a specific programme of incentives for the recruitment of unemployed women. This has been implemented since 2004 with a view to fostering women workers' employment, focusing in particular on women victims of trafficking, disabled women and Roma women.

The CEACR has asked the Albanian government to increase its efforts to address gender discrimination in employment and occupation in line with the provisions of the above-mentioned Law on Equal Gender Society regarding the adoption of appropriate measures to promote equality of opportunity between men and women.

To further combat discrimination in employment and occupation, the Albanian government has set up under the Framework Convention for the Protection of National Minorities a National Strategy on the "improvement of the Living Conditions of the Roma Community" with the aim of improving the living conditions, education and employment of the Roma people.

According to the United States Department of State *2009 Country Reports on Human Rights Practices* many communities, particularly those in the northeast, subject women to societal discrimination as a result of social norms that consider women to be subordinate to men, according to the traditional code known as Kanun.

Conclusions:

Despite equality in law, the principle of equal pay for work of equal value is not applied in practice and women are often underemployed or work outside their field of training. Women are discriminated against in the northeast part of the country due to traditional social norms.

III. Child Labour

Albania ratified Convention No. 138 on the Minimum Age in 1998 and Convention No. 182 on the Worst Forms of Child Labour in 2001.

The Albanian state provides nine years of tuition-free, compulsory for children aged 6 to 13. However many children, especially in rural areas, leave school before the end of compulsory education to work with their families. Parents are required to pay for supplies, books and even heaters for some classrooms, making school prohibitively expensive for many families and leaving a growing population of vulnerable, unregistered children at risk of trafficking or exploitation. The majority are Roma children, who are the largest group to be out of school and the majority of street children.

The law sets the minimum age of employment at 14 years and regulates the amount and type of labour that children under the age of 18 may perform. However, according to section 100(2) of the Labour Code young persons from 16 years of age may be employed in difficult or hazardous work, under conditions determined by decree that limit working hours and may regulate working conditions. And while the Labour Code allows children between 14 and 16 years to engage in "easy jobs" during school breaks, there are no criteria and definitions set up in the Labour Code for what constitutes "easy jobs". The Labour Code appears to exclude work performed outside of a formal labour relationship, such as self-employment, from its scope of application.

The law provides for the Ministry of Labour, Social Affairs, and Equal Opportunity to be responsible for enforcing minimum age requirements through the courts. However, there are no reports that enforcement took place. Labour inspectors generally investigate only the formal labour sector, whereas most child labour occurs in informal economic activities. To improve this situation 20 labour inspectors have been trained on child labour issues under the action plan "Enhancing the capacity of labour inspectors to combat the worst forms of child labour in Albania". Another 75 labour inspectors have been trained more specifically on identifying and monitoring the worst forms of child labour, according to the CEACR.

According to the International Programme on the Elimination of Child Labour (IPEC) of the ILO, a large number of children work in extremely hazardous occupations and under dangerous conditions in the following sectors: agriculture, construction, small shoe and clothing factories and the service sector. They are employed both as permanent workers and as seasonal or day workers. The Construction Workers' Trade Union reports that 20% of

construction workers are less than 16 years of age. Children working in these sectors are exposed to chemicals, carrying heavy loads, exhaustion owing to long working hours, injuries from tools, and denial of access to schooling and social activities necessary for proper growth and development. However, the majority of child labourers work as street or shop vendors, beggars, small trade and services, farmers or shepherds, drug runners, transport, textile factory workers, miners, street construction or shoeshine boys. Girls are mostly used for begging and washing cars.

According to Education International, approximately 50,000 children work part time or full time. Homeless street children are common, many of them Roma who make up 90 percent of street children. The ILO CEACR has expressed deep concern at the grave situation of children begging on the streets in Albania, who are particularly exposed to the worst forms of child labour.

Although the trafficking of children for labour or sexual exploitation is prohibited by law, it remains an issue of concern in practice. Albania is a source, transit and destination country for child trafficking. The prevalence of child trafficking results from poverty, economic instability, housing problems and poor living conditions, low levels of education, low employment opportunities, and improper/ineffective law enforcement. Destination countries for Albanian children are mainly Italy and Greece and trafficking of girls for commercial sexual exploitation is considered a problem.

The Confederation of Trade Unions of Albania has reported several times that children are falling victim to trafficking, sexual abuse and organised crime and that child labour is a deep-rooted problem, mostly related to subcontracted production of shoes and clothing (in 2006 textile, leather, garment and footwear production accounted for just over half of total Albanian exports). Albanian trade unions have appealed to trade unions all over the world, especially in countries to which Albanian goods are exported, to support them in the fight against child labour.

According to IPEC, Albania is among the countries in Central and Eastern Europe most seriously affected by the problem of sexual and labour exploitation of children, either through a trafficking process or at the child's place of origin.

To combat the problem of child labour, the Albanian government has adopted the National Strategy and Plan of Action for the Fight against Child Trafficking and the Protection of Child Victims of Trafficking and several programmes aimed at preventing and eliminating child labour have been carried out with ILO-IPEC.

In January 2008, the Criminal Code was amended to include parents' exploitation of children for begging as a separate criminal offence because previously, the exploitation of children in the streets of Albania occurred due to the lack of a national mechanism for the protection of children, the poor enforcement of the right to education for all children and the insignificant punishment of child exploiters.

Conclusions:

Exploitation of children at work is a severe problem in Albania. The criteria for employment of persons under 18 are not well defined in the Labour Code. Child trafficking or child labour occur in extremely hazardous occupations in agriculture, construction, small shoe and clothing factories and the service sector and many children, many of them of Roma origin, work as shop vendors or beggars.

IV. Forced Labour

Albania ratified Convention No. 29, the Forced Labour Convention, in 1957 and Convention No. 105 on the Abolition of Forced Labour in 1997.

The law prohibits forced or compulsory labour, including by children, or trafficking in persons for all purposes. However, the country was a source country for men, women, and children trafficked for the purposes of sexual exploitation and forced labour, including forced begging and agricultural work. Victims were trafficked primarily to Greece as well as to Italy, Macedonia, Kosovo, Spain, France, the United Kingdom, and other West European countries as well as within the country. Most sex trafficking victims are women and girls between the ages of 15 and 25, and 90 percent are ethnic Albanian. Ethnic Roma children are most at risk for forced begging.

A National Strategy on the Fight against Trafficking in Human Beings has been adopted by the government and provides for training personnel and raising public awareness to prevent and combat trafficking and to identify and assist victims of trafficking. However the prosecution of labour trafficking offenders has not been adequately effective, according to the annual Trafficking in Persons Report 2009.

Conclusions:

The law prohibits trafficking, forced and compulsory labour, including by children. However, the practice of trafficking human beings for the purpose of forced labour still exists in Albania. It is reported that women and girls are trafficked for commercial sexual exploitation.

Recommendations:

1. The government should amend the Labour Code to ensure that all workers enjoy the same rights to freedom of association.
2. The conditions under which strikes are prohibited are too strict and must be amended in order to comply with the stipulations of the ILO core Conventions.
3. The government should ensure the efficient and speedy functioning of special arbitration tribunals and labour courts so that they deal effectively with trade union rights violations.
4. Legislation that forbids anti-union discrimination must be enacted, accompanied by a complaints filing mechanism in order to convey such complaints effectively to the Labour Inspectorate.
5. The government should improve the system established to prevent unfair dismissals as it is inadequate and does not provide effective protection of the worker, as the burden of proof lies on the victim.
6. The government must immediately stop the nationalisation of trade union assets and withdraw the approved legislation to implement it.
7. The government should take further steps to promote equality of opportunities between men and women and increase its efforts to address gender discrimination in employment and occupation.
8. The government should take active measures to increase school attendance rates and reduce school drop-out rates for children, as education is key to preventing children from engaging in the worst forms of child labour.
9. The government should provide an effective child protection safety net, and take the necessary measures to enable children who work on the streets to re-enter the school system.
10. The government should introduce and support programmes to reduce the poverty and inequality faced by Roma communities.
11. The government should strengthen the prosecution of labour trafficking offenders.
12. In line with the conclusions of the Doha WTO Ministerial Conference and Albania's obligations as a member of the ILO, the government of Armenia should provide regular reports to the WTO and the ILO on its legislative changes and implementation of all the core labour standards.
13. The WTO should request the ILO to intensify its work with the government of Albania in these areas and provide a report to the WTO General Council on the occasion of the next trade policy review.

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