



**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
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Summary record of the 138th meeting

Held at the Palais Wilson, Geneva, on Monday, 22 November 2010, at 3 p.m.

Chairperson: Mr. El Jamri

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The meeting was called to order at 3 p.m.

Consideration of reports submitted by States parties under article 73 of the Convention

Initial report of Albania (CMW/C/ALB/1; CMW/C/ALB/Q/1 and Add.1)

1. *At the invitation of the Chairperson, the delegation of Albania took places at the Committee table.*

2. **Mr. Sulkaj** (Albania), introducing his country's initial report (CMW/C/ALB/1), said that Albania had ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families by Act No. 9703 of 2 July 2007. The subsequent amendments to the existing legal, administrative and institutional framework outlined in the report indicated Albania's commitment to implementing the Convention effectively.

3. The legal framework that secured the protection of migrant workers' rights consisted of the national Constitution and international agreements ratified by Parliament, in addition to laws, regulations and by-laws. The Convention was an integral part of domestic legislation and formed the legal basis for further steps to manage migrant labour flows, of both nationals and non-nationals.

4. The institutional framework was headed by the Ministry of Labour, Social Affairs and Equal Opportunities, and a number of other ministries participated at the policymaking level. The Ministry of Foreign Affairs protected the rights of nationals working abroad and was responsible for the signature of bilateral and multilateral agreements and readmission agreements. The Ministry of the Interior controlled the entry of non-nationals to the country and the departure of Albanian nationals. The Ministry of Education and Science organized education in Albania for pupils up to 18 years of age and was responsible for the establishment of cultural centres in host countries. The Ministry of Justice took steps to prevent and punish abuses of the rights and freedoms of migrant workers. The Ministry of Culture, Tourism, Youth and Sports drafted national plans and policies within its sphere of competence. The Ministry of the Economy, Trade and Energy drafted and implemented policies on economic growth and stability, while the Ministry of Finance drew up fiscal policies that would orient the economy. The Ministry of Health developed policies and planned health services at the national and regional levels, in addition to drafting and enforcing public health legislation.

5. In the context of its stabilization and association agreement with the European Union, Albania had adopted the National Strategy for Development and Integration 2007–2013, to bring domestic legislation into line with the *acquis communautaire*. It had identified the key challenges in that area, focusing on trade-related provisions, customs and taxation. Its employment action plan for the same period included setting and monitoring feasible objectives and ensuring the commitment of all stakeholders.

6. In view of the difficulties encountered in respect of collecting regular and periodic statistical data on migration, the bodies concerned were taking steps to register migrant workers and coordinate with the civil registry office. The Directorate of Migratory Policy, Return and Reintegration had played an effective role in organizing the migration process by monitoring and coordinating the National Migration Strategy and the plan for implementing the National Employment Strategy.

7. The number of Albanian migrants abroad in irregular situations had diminished in recent years and projects had been established abroad to support their voluntary return. Some such projects helped returnees to establish microenterprises and find employment.

During the period 2005–2007, some 500 Albanian migrants had returned from Italy with the help of such projects.

8. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families had been published in the Official Gazette in 2007. Specific manuals providing practical information on regular employment in Italy and Greece had also been published; another manual on regular employment in Great Britain and one on living and working in Canada were forthcoming. The Convention received broad coverage in the media. In addition, a range of leaflets and brochures on migration, including return to country of origin, were published. Information and advice on domestic and international legislation on migration were available via the Ministry of Labour website. A manual on living and working in Albania was being drafted for immigrants, with input from the Ministry of the Interior. Information was transmitted abroad to Albania's diplomatic and consular offices through the Ministry of Justice and the Ministry of Foreign Affairs.

9. Albania had ratified the eight core International Labour Organization (ILO) conventions and the revised European Social Charter. The right to create independent trade unions and employers' organizations was guaranteed, although such organizations remained weak. Social dialogue was in its early days; although recognized, the right to collective bargaining at the enterprise and sectoral level was not always effective, agreements were difficult to enforce and the mandate of the National Labour Council needed to be strengthened. Although Albania had ratified the ILO conventions related to minimum ages and the Worst Forms of Child Labour Convention (No. 182), children of school age continued to work. More frequent labour inspections were needed to reverse that trend.

10. The European Union *acquis* on social policy and employment included minimum standards with regard to labour law, equal opportunities, health and safety at work and non-discrimination. A number of adjustments would be necessary to bring Albania's labour laws fully into line with the *acquis*. Moreover, there was no legislation to bring information and consultation activities at the national or transnational level into line with European Union directives. The fact that particular sectors such as agriculture and issues such as exposure to biological agents in the workplace were excluded from the remit of the State Labour Inspectorate, the body responsible for monitoring and enforcing legislation on health and safety at work, substantially affected the uniform implementation of the relevant *acquis* in that domain.

11. **Mr. Sevim** (Country Rapporteur) said that migrant workers' issues were of particular importance to Albania in view of the high proportion of the population living and working abroad. The report mentioned that in Albania, "going to *kurbet*" was a synonym for migration; the word *kurbet*, derived from Arabic, was highly resonant and spoke of more than migration. With regard to the legislative framework, he noted that Albania had ratified most of the international instruments on migration, with the exception of the ILO Convention concerning Equality of Treatment of Nationals and Non-Nationals in Social Security (No. 118) and the European Convention on Establishment. He wished to know whether international agreements prevailed in cases where there was a conflict between the Constitution and international agreements ratified by the State party. He also requested information on cases in which the provisions of a human rights convention had been applied directly by the national courts.

12. Important immigration policies had been implemented in Albania during the past decade and much had been achieved, in particular through the dialogue with the European Union on visa facilitation. Awareness of migration issues had improved and social workers and border police had been trained. He requested further information on training that made

reference to the Convention and, also, on the training provided to judges and prosecutors in connection with the Convention.

13. The views of non-governmental organizations on policy implementation were essential to obtaining a full understanding of the issues involved, as was their input to the periodic report and the role that they played in the implementation of the Convention.

14. Albanian migration policy consisted of three main, interlinked components, namely, social security rights, the readmission agreement with the European Union, and the integration of returnees. The export of benefits was at the core of bilateral or multilateral social security agreements between States. Most Albanians abroad lived in the European Union and in Canada, Turkey and the United States of America. Although one third of its population lived abroad, Albania had only one bilateral social security agreement, with Turkey. Were Albania to accede to the European Union, social security rights could be guaranteed under the applicable legislation. Meanwhile, however, he wished to know whether benefits could be exported under Albanian social insurance schemes, particularly long-term benefits such as old-age pensions, invalidity pensions and survivors' pensions. He also asked whether migrant workers who returned to Albania had the same pension rights as workers who had not emigrated, and whether temporary workers and their families had social security rights and access to national health benefits.

15. He noted that the readmission agreement between the European Union and Albania had come into force in 2006; it formed part of the stabilization and association process and was a requirement for Albania's future accession to the European Union. Under the terms of the agreement, European member States and Albania mutually agreed to readmit their own nationals under all circumstances and third-country nationals under certain conditions. Under articles 2 and 3 thereof, Albania undertook to readmit all persons coming from Albania who did not or who no longer fulfilled the conditions in force for entry into, presence in, or residence on, the territory of the requesting member State. Albania had stated in its written replies that all its readmission agreements took into account the European Union recommendations on procedural guarantees, which also meant the criteria established in the Convention. However, there appeared to be no procedural guarantees for documented or undocumented migrants prior to expulsion. That, combined with the lack of agreements on social security, meant that deported migrants were denied their social security rights, among others. Moreover, it was not clear which legislation would be applicable were a third-country national to be deported from Albania under the provisions of the readmission agreement. He wished to know whether procedural guarantees or the provisions of the readmission agreement were applied to third-country nationals subject to expulsion to the European Union.

16. He noted that some 200,000 Albanians had returned from Greece to Albania during the period 2007–2010 and that a number of large-scale reintegration projects had been implemented; information and guidance on health, education, employment and vocational training for returnees and their families had been published and distributed; and the Government had drafted a new plan of action. It could be helpful to investigate the economic and social rights of returnees through consultation with sending countries or the European Union. The Committee would appreciate some additional information on programmes to integrate migrant workers in Albanian social, economic and cultural life and to ensure that they received accurate information and adequate services.

17. Under the Convention, migrant workers and members of their families, whether documented or not, were free to join trade unions. However, the Foreigners Act (No. 9959) of 17 July 2008 stated only that "migrant workers" enjoyed that right in Albania. He wished to know whether undocumented migrant workers could join trade unions.

18. He requested further information on the status and situation of family members of migrant workers in cases of death or divorce, and asked whether Albanian nationals on the electoral roll had the right to vote while living abroad.

19. With regard to children, reports indicated that some 4,000 unaccompanied Albanian children were living abroad. The Committee would like further information on the results of the projects that the State party had mentioned in its replies to the list of issues. Had the number of children in that situation decreased and, if so, to what extent? Were unaccompanied children continuing to leave Albania to live abroad? The Committee would like further information on the relationship between unaccompanied children living abroad and trafficking in children.

20. **Mr. El-Borai**, noting that the Convention had been ratified and published in the Official Gazette, asked the delegation to clarify the precise legal status of the Convention in relation to the Constitution.

21. **Mr. Alba** requested further information on the participation of the private sector in the migration process and on the aims of the Ministry of Labour, Social Affairs and Equal Opportunities in encouraging such participation through the Directorate of Migratory Policy, Return and Reintegration. He asked whether the remit of the Directorate included both Albanian emigration and foreign immigration. He also asked whether the State party had concluded many employment agreements with other countries, and, if so, how the Government assessed their effectiveness in terms of protecting the rights of Albanian workers abroad and migrant workers in Albania.

22. **Ms. Poussi Konsimbo** said that she would like to have further details on the exact legal nature of the “normative acts” listed in paragraphs 164 to 183 of the State party’s report, and asked whether they were applied as law and, if so, who was responsible for ensuring their application. She asked what the link was between the Inter-ministerial Migration Committee and the other authorities responsible for labour migration in the State party (para. 189). She asked what added value had been contributed to the management of migration in the State party by the National Migration Strategy and the National Strategy for Integral Management of Borders and the associated action plans. With reference to the statistics given in paragraph 267 of the report, she asked why 732 foreign nationals were not required to have work permits. She requested further details on the system for issuing entry visas according to country categories determined by law (para. 307), and what criteria were used. She asked whether those declared by the Ministry of the Interior to be “undesirable persons” and therefore refused entry to or residence in Albania (para. 311) had the right to appeal against that decision. With reference to paragraph 350 of the report, she asked what progress had been made in the State party’s plans to provide special accommodation for women and children in police stations and in the regional directorates for borders and migration. She requested further information on whether Albanian nationals living abroad were able to exercise their right to vote and under what conditions. Lastly, she asked for details of the systems put in place by private employment agencies to ensure that they were in a position to gather information on Albanian nationals working abroad and submit it to the Ministry of Labour, Social Affairs and Equal Opportunities every six months (para. 514).

23. **Mr. Tall** requested further details on the extent to which the exit of Albanian nationals from the country was controlled and asked whether there were any conditions to be met before such exit was authorized. He requested further information on and specific examples of how the Ministry of Justice played a positive role in migration policy. He asked the State party to make the law on migration of Albanian nationals for employment purposes and the law on foreigners available to the Committee. In relation to article 16 of the Convention, he asked whether the Code of Penal Procedures had been amended to require the police to inform the relevant consular or diplomatic authorities when a migrant

worker was arrested or detained. He requested further details on the procedures for covering the travel costs of foreigners subject to expulsion orders.

24. **Mr. Taghizade** noted from paragraph 41 of the written replies to the list of issues that the right of Albanian nationals to vote in elections could be exercised on Albanian territory only, which hindered the exercise of that right by Albanian migrant workers. Accordingly, while he understood that international conventions had primacy over domestic legislation in Albania, he would like to know whether there had been any comprehensive review of the extent to which the State party's domestic legislation was in conformity with its obligations under the Convention.

25. **Mr. Carrión-Mena** asked whether readmission plans had been implemented for Albanian migrant workers who wanted to return to their home country following the shift from communist to democratic government, and with what results. He requested details of any mechanisms and measures aimed at protecting the rights of Albanian nationals abroad. He asked whether the statistics that the Government used to formulate migration policies were reliable and sufficient and whether government policies existed to encourage the direction of remittances from Albanian migrant workers abroad towards productive economic activities.

26. **Ms. Miller-Stennett** asked what structures were in place to ensure the protection of the rights of Albanian emigrants in terms of housing, general welfare and employment disputes, and what role the Government played in that respect.

27. **The Chairperson** asked what steps the State party had taken to ensure that Albanian migrant workers abroad were able to retain their cultural identity, and how the actions of the various ministries and other bodies involved in migration were coordinated. He asked for further details on the readmission agreements in place between Albania and other parties, and how the State party evaluated the success of such agreements. He wondered why social security agreements had not been concluded with any country other than Turkey and whether any further such agreements were in the pipeline. He requested information on how successful the State party's consular system was in protecting Albanian migrant workers abroad and how the Convention had contributed in that respect. He asked whether the State party recognized the problem of unaccompanied children as a social phenomenon that went beyond migration issues and requested details of any action it had taken to address that problem. He asked what action the State party had taken at the regional level to enhance the migration process, and how it sought to promote the Convention within Albania and in the region. He wondered what added value the Convention had brought to migration policy in general in the State party. Lastly, he asked whether the State party had given any thought to making declarations recognizing the competence of the Committee to receive and consider communications, as provided for in articles 76 and 77 of the Convention.

The meeting was suspended at 4.55 p.m. and resumed at 5.20 p.m.

28. **Ms. Ternova** (Albania) said that, under the Albanian Constitution, international agreements that had been ratified entered into force once they had been published in the Official Gazette; they had precedence over domestic law. One of the main aims of the initial report had been to summarize the situation of migrant workers over the past century; that explained in part why NGOs had not been involved in drafting it.

29. **Mr. Sulkaj** (Albania) said that the current agreement on social security rights with Turkey was highly beneficial and considerable efforts were being made to reach similar agreements with Greece and Italy, which were major destinations for Albania's migrant workers. Negotiations on social security agreements were also under way with the Governments of France, Germany and Hungary.

30. Social insurance schemes in Albania, whether for nationals or non-nationals, were organized on an individual rather than on a family basis, although some private institutions did offer policies for families.

31. In respect of readmission agreements, the Council of Ministers had approved a strategy and action plan in 2010, principally for undocumented Albanians abroad who had been expelled, to create the conditions for their return to a normal life in Albania. Training and supervision in that regard had been provided by the International Organization for Migration. Albanian returnees and their families were entitled to various forms of social assistance immediately upon their return and some returnees had been given additional assistance to help their children adjust to the Albanian school system. However, there was no positive discrimination in favour of returnees.

32. The integration of foreigners was not a problem in Albania, which had not been affected by increased inflows of migrant workers as a result of the global economic crisis. However, facilities were available to shelter and assist foreigners in need, and border police and social workers received the appropriate training to deal with any such cases.

33. He confirmed that migrant workers were eligible for trade union membership from the moment that they were properly documented.

34. **Ms. Ternova** (Albania) said that family members of migrant workers who had applied for a work visa were entitled to documentation as family members and to a residence permit. Under article 23 (5) of the Foreigners Act, residence permits were not automatically extended for the family members of a migrant worker who died or divorced. However, a non-Albanian spouse who had legal custody of a child with Albanian citizenship could apply to renew his or her stay.

35. **Mr. Sulkaj** (Albania) said that all Albanians who had attained majority were eligible to participate in elections. However, it was currently not possible to vote from abroad. Eligible Albanian migrant workers living abroad who wished to participate in elections needed to return to Albania in order to do so.

36. With regard to unaccompanied children and trafficking in minors, he noted that in Albania the problem mainly concerned the Roma, although the situation had improved considerably, not only because of improvements in the economic situation, which eased the burden on families, but also because of more effective border controls for children. Moreover, other measures had been taken to improve the situation, such as the provision of educational assistance to poor families and compulsory education programmes for Roma.

37. In connection with the relationship between private employment agencies and the Government, he clarified that eight private employment agencies approved and licensed by the Government worked in Albania. Those agencies negotiated and created conditions for the employment of Albanians abroad, and submitted quarterly reports to the Government on their activities, including on training uptake and actual jobs procured.

38. The Directorate of Migratory Policy, Return and Reintegration was responsible for issuing work permits to foreign migrant workers in Albania, while the Ministry of the Interior issued residence permits. The various categories of work permit were defined by the type of work concerned; in exceptional cases, such as work requiring highly specific technical knowledge, visas could be obtained at the border.

39. In respect of employment agreements with other countries, Albania had previously had an agreement from 1991 to 1993 with Germany and negotiations were currently under way with Italy for an agreement that would benefit seasonal workers from Albania. An agreement with France had almost been reached and another was being negotiated with Greece, although the current economic situation in that country had obstructed progress. Decision No. 164 of the Albanian Council of Ministers established various categories of

work permits for different types of economic activity in greater detail than had previously been the case.

40. The Inter-ministerial Committee was chaired by the Deputy Prime Minister and was responsible for monitoring and evaluating strategies, chiefly in relation to the National Action Plan. In cases where the goals envisioned under the plan had not been implemented, for example because of a lack of resources, it was the responsibility of the Inter-ministerial Committee to draw attention to the situation and to reschedule or update the goals concerned.

41. **Ms. Ternova** (Albania) said that in order to obtain an entry visa, applicants were required to go to 1 of the 52 Albanian consular and diplomatic offices around the world, either in their country of origin or in the nearest country, and to submit a passport valid for at least 12 months, a recommendation from their host in Albania, a completed application form, including a declaration of the reason for their stay, and proof that they had sufficient funds. The application was then forwarded to the foreign affairs and interior ministries for consideration, and the applicant was notified of the outcome within two to seven days. Anyone declared to be an “undesirable person” had the right to appeal against that decision.

42. **Mr. Sulkaj** (Albania) said that centres existed in the State party for the rehabilitation of women who had been victims of trafficking, and that the Ministry of Labour, Social Affairs and Equal Opportunities provided incentives, through an employment promotion fund, for the relevant organizations to train or employ people from marginalized and vulnerable groups. In response to the question about readmission plans for Albanian nationals, he noted that the National Migration Strategy and Action Plan covered the rights of all persons returning to Albania, including the right to be housed by local government authorities and to receive assistance with their children’s education.

43. He acknowledged that the Government was not completely confident in the reliability of the statistics currently available to it, which had been gathered by the Institute of Statistics in cooperation with its counterparts in Greece, Italy and other countries and with the International Organization for Migration. The situation was complex, especially since illegal migrants had in the past been reluctant to provide data. The Government was working hard to address the issue, particularly in preparation for the census to be conducted the following year to collect information on migration.

44. The Ministry of Finance had taken a number of steps to encourage foreign nationals to live and invest in Albania, including by offering fiscal benefits. In response to the question about remittances, he said that since only small amounts were currently being sent by Albanian migrant workers, for the purposes of their family members’ daily subsistence, there was no specific Government policy or strategy to direct their investment towards productive economic activities.

45. Disputes between Albanian nationals working abroad and their employers were usually addressed by the relevant embassy. Given that most Albanian migrant workers went to developed countries where they were treated well, such disputes were rare and there had been no need to establish any special procedures for dealing with them.

46. In order to ensure that Albanian migrant workers abroad could retain their cultural identity, the Government had established organizations such as the Diaspora Institute, organized national days, and run programmes such as the Brain Gain Programme. Civil society and the media also played an important role in that respect, organizing projects to expose children to their national language, for example.

47. Regional cooperation was vital to the success of migration policies. The State party was involved in many bilateral and regional projects and cooperated closely with other countries in the region, such as Italy, Montenegro and Croatia.

48. **Mr. Sevim** noted that the incorporation of international agreements into national legislation through publication in the Official Gazette did not necessarily mean that they were directly applicable in the State party. Taking the issue of readmission agreements as an example, and assuming that the Convention was directly applicable, he asked how the State party would deal with any conflict between the Convention and the readmission agreement between the State party and the European Commission, given that the Convention offered procedural guarantees whereas the readmission agreement did not. Under the readmission agreement, it was easy to lose entitlement to residence in European Union countries, and foreign nationals could be subjected to evaluation after living in the country for 30 or 40 years; if they no longer fulfilled the requirements, they could be deported without a court decision. While recognizing the importance to migrant workers of social security agreements, he urged the State party to ratify ILO Convention No. 118 and the European Convention on Establishment.

49. He requested further information on the situation of temporary workers, including whether they had access to health services. On the subject of the right to vote in national elections, he asked whether Albanians working abroad were required to return to Albania in order to register to vote, or whether they could register at an embassy or consulate. He requested further details on the role of embassies or consulates in resolving difficulties encountered by Albanians abroad: did they have attachés or counsellors to deal specifically with such difficulties?

50. **Mr. El-Borai**, echoing Mr. Sevim's concerns about the direct applicability of the Convention in Albania, said that although the State party had confirmed that publication of the Convention in the Official Gazette conferred on it the same status as national legislation and that the provisions of the Convention would prevail in the event of any conflict, it seemed that in practice the situation was different. It appeared from the State party's replies that the Convention was not being directly applied in cases concerning the rights of migrant workers with respect to trade unions (article 40 of the Convention), the rights of family members in cases where the migrant worker died or divorced (art. 50, para. 1) and the rights of migrant workers and members of their families to vote and to be elected at elections of their State of origin (art. 41). He asked the State party to comment on how the Convention was applied in those three specific cases.

The meeting rose at 6 p.m.