

Assessment on the Protection of the Rights of Migrant Workers in Albania



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Assessment on the Protection of the Rights of Migrant Workers in Albania

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Introduction

This report “Assessment of the Protection of the Rights of Migrant Workers in Albania”, was prepared in the framework of the project “The promotion of decent employment opportunities and the protection of migrant workers in Albania”, funded by the Government of Sweden, through the “One UN” Coherence Fund and implemented by IOM Tirana in partnership with relevant Government stakeholders in Albania.

During the preparation of the report, the following were conducted: a desk review on international conventions on migrant workers and migrant women rights and related issues; a desk review of Albania’s legislation and regulatory framework on immigration, migrant workers and migrants’ rights in Albania, with a particular focus on women’s rights; meetings and discussions with some key stakeholders; and individual and focus group interviews with stakeholders and migrants in Albania. In addition, the consultant discussed with several representatives from the relevant institutions addressing immigration issues in the country, such as the Ministry of Public Order, Ministry of Social Welfare and Women, Ministry of Justice, General Director of Prisons, National Employment Service, State Labour Inspectorate, District Court of Tirana, Administrative Court of Appeal in Tirana, Supreme Court, Prosecutor Office of Tirana, Albania’s Ombudsman, Albanian Helsinki Committee, etc.

The report consists of six parts:

Part one introduces the principal international conventions on human rights of migrant workers in order to give a contextual background.

Part two analyses Albania’s legislation for the implementation of human rights of migrant workers, focusing on primary and secondary legislation as well as on the regulatory framework and standards and procedures of employment, stay and integration of migrant workers in Albania.

Part three explores the gaps between international conventions and national framework of regulations of migrant workers in Albania, with particular focus on legislation gaps, policy gaps and institutional gaps.

Part four addresses the institutional framework and capacities for monitoring rights protection and access to rights for migrant workers, with particular focus on institutional framework, monitoring instruments and monitoring institutions.

Part five examines the issues of implementation and violation of the rights of migrant workers in Albania.

Part six gives an overview of the main findings and recommendations.

Executive Summary

1. The report gives an overview of the implementation of human rights of migrant workers in Albania and explores the country's capacities for the implementation of the rights of migrant workers with a focus on institutional framework and monitoring instruments and institutions.
2. The report examines the international and national legal framework of the rights of migrant workers. The global level includes a review of the existing UN and ILO conventions and protection mechanisms, Council of Europe and EU policies and standards relevant to migrant workers. The national level refers to Albania's constitution, legislation, regulatory framework and employment standards regarding foreigners in Albania.
3. Albania has ratified and is successfully implementing the majority of international conventions on migrant workers. Although it is a typical country of origin, Albania has an almost complete legal framework on migrant workers.
4. Migrants in Albania are mainly employed as waged workers, self-employed and entrepreneurs. The number of waged workers and self-employed individuals has declined between 2012–2014 whilst the number of entrepreneurs has increased.
5. Albania's legislation favours the entrance, stay, employment and study of foreigners in Albania. The migrant workers' treatment reflects the traditional culture of Albanians on respecting and honouring foreigners.
6. There is a gap between the satisfaction of migrant workers from Albanian citizens' behaviour and their satisfaction from public services, agencies and institutions. The level of satisfaction from Albanian citizens is higher than the level of satisfaction foreigners get from public services.
7. Albanian migration legislation reflects generally the principles of international conventions on migrants' rights. However, there are still several legal, policy and institutional gaps in implementing the rights of migrant workers in Albania.
8. Albania's migration legislation has no legal provisions addressing directly the migrants' gender perspective and gender equality. However, these issues are generally addressed by country's legislation on economic and labour relations, which apply the requirements of the international convention on elimination of discrimination against women. This assessment is the first effort to address immigrants' gender issues and gender inequalities in Albania.
9. There is a discrepancy between addressing human rights, emigrants' rights and migrants' rights in the country. The emphasis of public debates and political communication on gender equality rarely includes women migrant workers in Albania.
10. The legislation gaps of addressing migrant rights in Albania are mostly related to: the time of issuing residence permits for family members; the right of family members to maintain the Residence Permit in divorce cases or upon the death of a migrant worker; the right of irregular migrants to join trade unions; the protection of irregular migrants, children, refugees and asylum-seekers; their access to integration programmes and social assistance and services, social housing and education.
11. The institutional framework to address labour migration policies in Albania is the following: Ministry of Internal Affairs, Ministry of Social Welfare and Youth, Ministry of Foreign Affairs, Ministry of Justice, Ministry of Health, Ministry of Education and Sport, Institute of Statistics and international organizations, such as the International Organization for Migration (IOM),

the International Labour Organization (ILO), the United Nations High Commissioner for Refugees (UNHCR), the United Nations Development Programme (UNDP), and the United Nations Children's Fund (UNICEF).

12. The institutional gaps in addressing migrant rights in Albania are mostly related to the fact that state institutions and agencies are scarcely addressing the rights of migrant workers; the legal and institutional framework on migrant workers' rights is not supported by appropriate human resources capacities in addressing these issues; the country has neither the institutional heritage, nor the institutional memory to address immigration issues; local government is scarcely involved in addressing, guaranteeing, supporting or monitoring the rights of migrant workers; trade unions and employers' organizations have shown no particular interest in protecting migrant workers; no State institutions collect, analyse, monitor or deliver information on respecting or violating migrant rights.
13. Currently, Albania follows several ways in respecting migrant workers' rights. These monitoring instruments are operated by a variety of public bodies, committees and civil organizations. The activities of migration-related government organizations and NGOs have had a positive impact on respecting the rights of foreign workers in the country. Their efforts have been focused particularly on developing legislation, supporting the development of Information Technology (IT), conducting surveys, strengthening institutional capacities and developing human resources addressing migration and migration-related issues.
14. However, even though Albania acceded to the International Convention on the Protection of the Rights of All Migrant Workers (ICRMW) in 2007 and reported to ICRMW in 2009, none of these organizations have conducted regular surveys or monitoring processes on the implementation of migrant workers' rights in the country.
15. The most important monitoring instrument on the implementation of the rights of migrant workers in Albania is the periodic reports submitted to the ICRMW. The Government of Albania reports periodically to the ICRMW on the status of the rights of migrant workers in the country. However, the 2008 and 2010 reports contain general information on the rights provided by country's legislation, rather than the implementation of the rights itself.
16. Other monitoring mechanisms are the periodic reports submitted to the Committee on the Elimination of Racial Discrimination (CERD), the Human Rights Committee, the Committee on the Elimination of Discrimination against Women (CEDAW) and the Convention against Torture (CAT).
17. The reports of UN Special Rapporteur and UNHCR are among the international sources on the implementations of rights of migrants entering Albania irregularly.
18. Some of the national instruments to monitor the implementation of the rights of foreign workers in Albania are the following: State Labour Inspectorate inspections, National Electronic Register of Foreigners, interministerial working group on Albania's Migration Profile, Albania's Ombudsman investigations, reports of law enforcement institutions, court cases, and reports of local NGOs, such as the Albanian Helsinki Committee.
19. Albania's Ombudsman and the Albanian Helsinki Committee are, respectively, the main public body and NGO that monitor the implementation of human and minorities' rights in Albania. There are also several civil society organizations with a particular focus on protecting human rights, children rights, elderly rights, women's rights and the rights of other vulnerable groups of population.
20. The report mentions several cases of complaints for the violation of the rights of migrant workers in the country during the last years. Most of the complaints relate to refusing entry, granting a Residence Permit or a Work Permit and expulsion from the country. The complaints have been mainly against the regional border and migration authorities or regional and local employment offices.

21. The State Labour Inspectorate has not received any complaints by foreign workers or self-employed foreigners in 2015.
22. According to Albania's Migration Profile, during 2012–2014 around 18 per cent of irregular migrants, 471 out of 2,618, were refused entry for several reasons, such as the lack of documents to prove their identity, previous violation of rules when residing in Albania, lack of financial support, failure to justify their intention to enter the country, etc.
23. The implementation of the rights of migrant workers in Albania encounters several challenges. The majority of the complaints relate to labour rights, access to public services, treatment of migrants entering Albania irregularly, access to the justice system, and their treatment in penitentiary institutions.
24. During the last years, the Special Rapporteur on migrants underlined the need for adequate information on seeking asylum, better care for migrant children and better interpretation assistance to irregular migrants entering Albania.
25. The Albanian Helsinki Committee, through its three consecutive reports, delivered periodically in 2006, 2012 and 2015 has underlined the need to improve the professional capacities of Police serving in border-crossing points; improve the infrastructure in the border crossing points; better satisfy the basic needs of irregular migrants, such as food, accommodation, health services, information services; and create basic conditions for women who should be served by female police officers.
26. Information from Tirana's Prosecutor Office shows that the violation of foreigners' rights is not an issue in Albania. During the last years, there have been around 10 cases per month, cases of foreigners who file criminal charges because of violations to their rights or damages to their interests. Cases filed by foreigners in the Office of the Prosecutor of the District of Tirana consist of around 1 per cent of the total number of cases filed in this Office.
27. Foreigners do not constitute a particular source for criminal behaviour and criminal charges in Albania. There are about 60 criminal charges per year against foreigners filed in the Office of the Prosecutor of the District of Tirana. Criminal charges against foreigners consist of around 0.5 per cent of total number of criminal charges all over the country.
28. Foreigners have generally complained to the courts for two main reasons: i) violation of their right to have an interpreter during the whole process; and ii) duration of the procedures of their cases. Last year, foreign embassies in Tirana have not reported serious complaints from their nationals for the violation of any right during courts cases.
29. Foreign inmates are treated equally with Albanians. There are no cases of violation of their rights on ethnic or citizenship grounds. The majority of foreign inmates in Albania are sentenced for criminal offences, such as involvement in the trafficking of narcotics. In November 2015, there were 93 inmates in Albanian prisons, most of them from UNSC resolution 1244-administered Kosovo,¹ Italy, the former Yugoslav Republic of Macedonia, Greece and Romania.
30. The Committee on Migrant Workers in its thirteenth session on 22 November to 3 December 2010, urged the Government of Albania to provide in the next periodic report information on the implementation of migrant workers rights, particularly on the right of family members to maintain their Residence Permit. However, this recommendation has not been reflected in legislation of Albania.
31. In response to the list of challenges and findings, several recommendations are proposed. Recommendations focus on the improvement of the implementation of migrant workers and migrant women rights in Albania. It is suggested that policies on employment of foreigners in Albania should prioritize and facilitate the treatment of migrant workers in some key economic and employment sectors and mainstream the issues related to female migrant workers.

I. International Conventions for the Implementation of Human Rights of Migrant Workers

There are three principal sources of international rights: international customs/norms, international conventions, and general principles of international rights generally accepted by sending and receiving countries.² In this section, reference will be made to principal international conventions on human and migrants' rights.

1.1. UN Conventions

Some of the UN conventions presented below address directly migrant worker rights and some others are related to these rights. The following conventions, ratified by the Republic of Albania, will be examined:

- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990, 1998.
- Additional Protocol against the Smuggling of Migrants through Land, Sea and Air, 2000.
- International Covenant on Social, Economic and Cultural Rights, 1966.
- International Covenant on Civil and Political Rights, 1966.
- International Convention on the Elimination of All Forms of Racial Discrimination, 1969.
- Convention on the Elimination of All Forms of Discrimination against Women, 1981.
- Convention on the Rights of the Child, 1990.
- Convention on the Prevention and Punishment of the Crime of Genocide Adopted by Resolution 260 (III) A of the United Nations General Assembly on 9 December 1948.
- The United Nations Convention relating to the Status of Refugees, 1951.
- Convention relating to the Status of Stateless Persons, 1954, and the Convention on the Reduction of Statelessness, 1961.
- Convention against Torture or Other Cruel, Inhuman, and Degrading Treatment or Punishment, 1987.
- Convention on International Organized Crime and its protocols, 2000.

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990, 1998 (Albania's accession in 2007)

The Convention provides the following basic rights for migrant workers and members of their families: right to freedom of movement to and from their countries of origin; right to life; right to freedom from torture or cruel, inhuman or degrading treatment or punishment; right to freedom from slavery,

² Ikonimi, L. Migration law. Training manual (E drejta migratore. Material trajnues), IOM Tirana, 2009.

servitude or forced compulsory labour; right to freedom of thought, expression, conscience and religion; right to privacy; right to property;³ right of equal treatment with nationals in respect to remuneration and other conditions of work such as overtime, holidays, etc.; right to join freely any trade union; right to enjoy the same treatment as nationals regarding social security benefits in so far as they fulfil the legislation requirements; right to emergency medical care;⁴ right of children to a name, registration of birth and nationality; right of access to education;⁵ right to preserve a cultural identity; right to transfer earnings and savings upon the termination of their stay in the State of employment;⁶ right to information by the State of origin, State of employment, or the State of transit of their rights arising from the present Convention, the conditions of their admission, and their rights and obligations in those States;⁷ right to form associations and trade unions in the State of employment; the right to equality of treatment with nationals in respect of protection against dismissal, unemployment benefits and access to alternative employment; in case of violations of work contracts by the employer, the right to address his/her case to the competent authorities of the State of employment;⁸ right to enjoy from export and import taxes; the right to equality of treatment with nationals of the State of employment, including access to educational, vocational and social services.⁹

Additional Protocol against the Smuggling of Migrants by Land, Sea and Air, 2000 (Albania's accession in 2002).

The Protocol defines the obligations to protect migrants from trafficking of migrants through Land, Sea and Air.

International Covenant on Social, Economic and Cultural Rights, 1966 (Albania's accession in 1991).

International Convention on Social, Economic and Cultural Rights prohibits discrimination on specific grounds in the exercise of the rights protected under the Covenant.¹⁰

International Covenant on Civil and Political Rights, 1966 (Albania's accession in 1991).

The International Covenant on Civil and Political Rights sanctions the following rights: All individuals within territory and subject to jurisdiction of a state enjoy their Civil and Political Rights without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status;¹¹ Measures in time of public emergency should not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin;¹² Everyone lawfully within the territory of a State have the right to liberty of movement and freedom to choose his residence and everyone shall be free to leave any country, including his own;¹³ Every child has the right to protection without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth;¹⁴ All persons are equal before the law and are entitled to the equal protection of the law against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status;¹⁵ Persons belonging to ethnic, religious or linguistic minorities shall not be denied the right to enjoy their own culture, to profess and practice their own religion, or to use their own language.¹⁶

3 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Articles 8–13.

4 Ibid. Articles 25–28.

5 Ibid. Articles 29–30.

6 Ibid. Articles 31–32.

7 Ibid. Article 33.

8 Ibid. Article 43.

9 Ibid. Article 43.

10 International Covenant on Social, Economic and Cultural Rights, Article 2.

11 International Covenant on Civil and Political Rights, Article 2.

12 Ibid. Article 4.

13 Ibid. Article 12.

14 Ibid. Article 24.

15 Ibid. Article 2.

16 Ibid. Article 27.

Convention on the Elimination of All Forms of Discrimination against Women, 1981 (Albania's accession in 1994).

The Convention imposes political, legal, social, economic and cultural measures to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on the basis of equality with men.¹⁷ The Convention grants women equal rights with men to acquire, change or retain their nationality and women equal rights with men with respect to the nationality of their children.¹⁸

Convention on the Rights of the Child, 1990 (Albania's accession in 1992).

The Convention sanctions the following children's rights: The rights to equal treatment despite race, religion, abilities, type of family, living place, language, gender, and culture;¹⁹ The right to family reunification: families whose members live in different countries should be allowed to move between those countries so that parents and children can stay in contact, or get back together as a family;²⁰ Protection of children from kidnapping, sale, prostitution and pornography;²¹ The right to special care, by people who respect their ethnic group, religion, culture and language;²² The right to care and protection if they are adopted or in foster care in the country where they were born, or if they are taken to live in another country;²³ The right to special protection and hejaje pune of children if they have been forced to leave their home and live in another country;²⁴ The right of minority or indigenous children to learn about and practice their own culture, language and religion even in the conditions where the practices are not shared by the majority of people in the country;²⁵ Protection of children from being abducted, sold or trafficked.²⁶

The United Nations Convention relating to the Status of Refugees, 1951 (Albania's accession in 1992).

The Convention endorses a single definition of the term "refugee": A refugee is someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion.²⁷ It represents both a status and a rights-based instrument and is underpinned by a number of fundamental principles, most notably non-discrimination, non-penalization and non-refoulement.²⁸ The Convention lays down basic minimum standards and rights for the treatment of refugees: access to the courts, to primary education, to work, and the provision for documentation, including a refugee travel document in passport form.²⁹

1954 Convention relating to the Status of Stateless Persons and the 1961 Convention of the Reduction of Statelessness.

Both conventions promote the reduction of statelessness through facilitating the process of naturalization of stateless individuals in the destination country.

International Convention on the Elimination of All Forms of Racial Discrimination, 1969 (Albania's accession in 1994).

The Convention sanctions the protection from "racial discrimination";³⁰ defined as the distinction,

17 Convention on the Elimination of All Forms of Discrimination against Women, Article 3.

18 Ibid. Article 9.

19 Ibid. Article 2.

20 Ibid. Article 10.

21 Ibid. Article 34.

22 Ibid. Article 19.

23 Ibid. Article 20.

24 Ibid. Article 22.

25 Ibid. Article 30.

26 Ibid. Article 35.

27 The United Nations Convention relating to the Status of Refugees, Article 1.

28 Ibid. Articles 3, 33.

29 Ibid. Articles 21, 22, 24, 26, 28.

30 International Convention on the Elimination of All Forms of Racial Discrimination, Article 1.

exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life; urges that nationality, citizenship or naturalization policies do not discriminate against any particular nationality; requests securing adequate advancement of certain racial or ethnic groups or individuals against racial discrimination; prohibits and intends to eliminate racial discrimination in all its forms and to guarantee of everyone the enjoyment of the following rights: the right to equal treatment before the tribunals and all other organs administering justice; the right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution; political rights, in particular the right to vote and to stand for election-on the basis of universal and equal suffrage, to take part in the government, in the conduct of public affairs and access to public service; other civil rights, in particular the right to freedom of movement and residence within the border of the State; economic, social and cultural rights, in particular: the rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration; the right to form and join trade unions; the right to housing; the right to public health, medical care, social security and social services; the right to education and training; the right to equal participation in cultural activities.³¹

Convention against Torture or Other Cruel, Inhuman, and Degrading Treatment or Punishment, 1987 (Albania's accession in 2003).

The provisions of the Convention extend the principal of non-return and non-discrimination in all cases containing an essential reason to believe that a person might be tortured if returned to their country or because of their origin.³²

Convention on International Organized Crime and its protocols, 2000 (Albania's accession in 2002).

The Convention intends to strengthen international police and judicial cooperation against organized crime.

1.2. ILO Conventions

Below is an overview of the ILO conventions which directly address the rights of migrant workers, and are ratified by the Republic of Albania. The conventions are as follows: Migration for Employment Convention (Revised), 1949 (No. 97) and Migration for Employment Recommendation (Revised), 1949 (No. 86); Convention for the Protection of Human Rights and Fundamental Freedoms, 1950; Migrant Workers Convention, 1975 (No. 143) and Migrant Workers Recommendation, 1975 (No. 151); Private Employment Agencies Convention, 1997 (No. 181); Domestic Workers Convention, 2011 (No. 189).

Migration for Employment Convention (Revised), No. 97, and Migration for Employment Convention Recommendation, No. 86, 1949 (Albania's accession in 2005).

The Convention and Recommendation sanction the following rights: the right of information on national policies, laws and regulations relating to emigration and immigration;³³ the right of adequate and free service to assist migrants with accurate information for employment;³⁴ the right of protection from misleading propaganda relating to emigration and immigration;³⁵ the right of adequate medical attention and good hygienic conditions at the time of departure, during the journey and on arrival

31 Ibid. Article 5.

32 Convention against Torture or Other Cruel, Inhuman, and Degrading Treatment or Punishment, Articles 1, 2.

33 Ibid. Article 1.

34 Ibid. Article 2.

35 Ibid. Article 3.

in the territory of destination;³⁶ the right of treatment no less favourable than that which it applies to its own nationals in respect of the following matters: remuneration, membership of trade unions and enjoyment of the benefits of collective bargaining, accommodation, social security, employment taxes, dues or contributions, legal proceedings;³⁷ the right of transferring the earnings and savings of the migrant for employment as the migrant may desire.

Migrant Workers Convention, No. 143, and Migrant Workers Recommendation, No. 151, 1975 (ratified by Albania in 2006).

The 143 Migrant Workers Convention sanctions the respect the basic human rights of all migrant workers,³⁸ protects migrant workers from trafficking,³⁹ informal labour,⁴⁰ unemployment,⁴¹ guarantees the security of employment,⁴² the equality of treatment for migrant workers and their families⁴³ in respect of employment and occupation, social security, trade union, cultural rights and of individual and collective freedoms for persons who as migrant workers or as members of their families are lawfully within its territory,⁴⁴ the reunification of the families (dependent children, father and mother) of all migrant workers legally residing in its territory,⁴⁵ etc.

Private Employment Agencies Convention, No. 181, 1997 (ratified by Albania in 1999).

The Private Employment Agencies Convention, No. 181, 1997 promotes equality of opportunity and treatment in access to employment and to occupations⁴⁶ and ensures that private employment agencies treat workers without discrimination on the basis of race, colour, sex, religion, political opinion, national extraction, social origin, or any other form of discrimination covered by national law and practice, such as age or disability.⁴⁷

Domestic Workers Convention, 2011 (No. 189) (Not ratified by Albania).

Domestic Workers Convention, 2011 (No. 189) lays down basic rights and principles, such as the freedom of association and the right to collective bargaining, the elimination of discrimination in respect of employment and occupation,⁴⁸ imposes the minimum age for domestic workers, forms of abuse, harassment and violence,⁴⁹ and ensures equal treatment between domestic workers and workers generally in relation to normal hours of work, overtime compensation, periods of rest and paid annual leave.⁵⁰

1.3. Council of Europe policies and standards

The principal Council of Europe policies and standards related directly or indirectly to migrant workers' rights are incorporated in the following documents, ratified by the Republic of Albania: Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms, 1950; European Social Charter (Revised), 1961, 1996; European Convention on the Legal Status of Migrant Workers, 1977; Council of Europe Framework Convention for the Protection of National Minorities, 1995; Convention

36 Ibid. Article 5.

37 Ibid. Article 6.

38 Ibid. Article 1.

39 Ibid. Article 5.

40 Ibid. Article 6.

41 Ibid. Article 8.

42 Ibid. Article 8.

43 Ibid. Article 9.

44 Ibid. Article 10.

45 Ibid. Article 13.

46 Private Employment Agencies Convention, No. 181, Article 5.

47 Ibid. Article 5.

48 Ibid. Article 3.

49 Ibid. Article 5.

50 Ibid. Article 10.

on Participation of Foreigners in the Public Life at Local Level, 1997; Council of Europe Convention on Action against Trafficking in Human Beings, 2005.

European Convention on the Legal Status of Migrant Workers, 1977 (ratified by Albania in 2007).

The European Convention on the Legal Status of Migrant Workers, 1977, grants the right of free recruitment, introduction and placing at work, the right to be provided prior to departure with a contract of employment, the right to information, exemption from import duties and taxes, the right to work permit and residence permits, the right to social and medical assistance, the right of access to the courts and administrative authorities and full legal and judicial protection, etc.

European Social Charter (Revised), 1961, 1996 (ratified by Albania in 2002).

Assuming that migrant workers and their families have the right to protection and assistance in the territory of any other Party, the Charter sanctions the following rights: adequate and free services in obtaining accurate information on national laws and regulations, against misleading propaganda relating to emigration and immigration; appropriate services for health, medical attention and good hygienic conditions during the arrival and departure from the receiving country; social services, public and private, in emigration and immigration countries; treatment no less favourable than that of nationals in respect of: remuneration, employment, working conditions; membership of trade unions and enjoyment of the benefits of collective bargaining; accommodation; employment taxes, dues or contributions; reunion of the family; transfer of the earnings and savings; teaching of the national language of the receiving state; teaching of the migrant worker's mother tongue to the children of the migrant worker.⁵¹ By ratifying the Charter in 2002, Albania undertook the responsibilities stemming from Article 19 which defines the right to protection and assistance to migrant workers and their families.

Council of Europe Convention on Action against Trafficking in Human Beings, 2005 (ratified by Albania in 2007).

Council of Europe Convention on Action against Trafficking in Human Beings, 2005, sanctions the following obligations for States: establish or strengthen national coordination between the various bodies responsible for preventing and combating trafficking in human beings; effective policies and programmes to prevent trafficking in human beings; promote a human rights-based approach and shall use gender mainstreaming and a child-sensitive approach in the development, implementation and assessment of all the policies and programmes; enable migration to take place legally, in particular through dissemination of accurate information by relevant offices, on the conditions enabling the legal entry in and stay on its territory; reduce children's vulnerability to trafficking, notably by creating a protective environment for them;⁵² involve non-governmental organizations, other relevant organizations and other elements of civil society committed to the prevention of trafficking in human beings and victim protection or assistance; strengthen legislative, administrative, educational, social, cultural measures to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking;⁵³ strengthen border controls to prevent and detect trafficking in human beings;⁵⁴ apply gender equality measures to promote gender equality and use gender mainstreaming in the development, implementation and assessment of measures.⁵⁵ The Convention urges the Government of Albania to take measures to prevent trafficking of human beings, particularly females and minors, residing in Albania.

51 European Social Charter (Revised), Articles 1–10.

52 Council of Europe Convention on Action against Trafficking in Human Beings, 2000, Article 5.

53 Ibid. Article 6.

54 Ibid. Article 7.

55 Ibid. Article 5.

Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms, 1950 (ratified by Albania in 1996).

The Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms, 1950 sanctions the following rights: protection from forced or compulsory labour;⁵⁶ freedom of thought, conscience and religion either alone or in community with others and in public or private.⁵⁷ The rights and freedoms set forth in the Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.⁵⁸

Framework Convention for the Protection of National Minorities, 1995 (ratified by Albania in 1999).

The 1995 Framework Convention for the Protection of National Minorities sanctions the following rights of national minorities: the right of equality before the law and of equal protection of the law. In this respect, any discrimination based on belonging to a national minority shall be prohibited;⁵⁹ the right to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage;⁶⁰ the right to manifest his or her religion or belief and to establish religious institutions, organizations and associations;⁶¹ the right to freedom of expression;⁶² the right to learn and use freely and without interference his or her minority language;⁶³ the right to foster knowledge of the culture, history, language and religion of their national minorities and of the majority;⁶⁴ the right to set up and to manage their own private educational and training establishments.⁶⁵ The Convention urges the Government of Albania to take measures to protect the identity, religion, language, traditions and cultural heritage of migrant workers in the country.

Convention on the Participation of Foreigners in Public Life at Local Level (ratified by Albania in 2005).

The Convention defines the following rights: the right of expression, organization and consultation with local native communities;⁶⁶ establishment of consulting structures of foreigners at local level;⁶⁷ the right to vote at administrative elections;⁶⁸ the right to information.⁶⁹ The Convention urges the Government of Albania to consult migrant workers on local developments and policies affecting their work and life in Albania.

1.4. European Union policies and standards

The principal European Union policies and standards are incorporated in the following documents:

1.4.1. EU conventions

Charter of Fundamental Rights of the European Union, 2000.

Charter of Fundamental Rights of the European Union, 2000 sanctions the following rights: protection

56 Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms, Article 4.

57 Ibid. Article 9.

58 Ibid. Article 14.

59 Framework Convention for the Protection of National Minorities, Article 4.

60 Ibid. Article 7.

61 Ibid. Article 8.

62 Ibid. Article 9.

63 Ibid. Article 14.

64 Ibid. Article 12.

65 Ibid. Article 13.

66 Convention on the Participation of Foreigners in Public Life at Local Level, Article 3.

67 Ibid. Article 5.

68 Ibid. Article 6.

69 Ibid. Article 8.

from compulsory and forced labour; protection from slavery or servitude; protection from trafficking in humans;⁷⁰ right to asylum;⁷¹ respect for cultural, religious and linguistic diversity.⁷²

The EU Racial Equality Directive 2000/43/EC

The Racial Equality Directive is a labour law act which implements the principle of equal treatment between persons irrespective of racial or ethnic origin. The Directive provides for the principle of equal treatment between people irrespective of racial or ethnic origin; gives protection against discrimination in employment and training, education, social protection (including social security and health care), social advantages, membership and involvement in organizations of workers and employers and access to goods and services, including housing;⁷³ gives victims of discrimination a right to make a complaint through a judicial or administrative procedure, associated with appropriate penalties for those who discriminate;⁷⁴ allows for limited exceptions to the principle of equal treatment, for example in cases where a difference in treatment on the ground of race or ethnic origin constitutes a genuine occupational requirement;⁷⁵ shares the burden of proof between the complainant and the respondent in civil and administrative cases, so that once an alleged victim establishes facts from which it may be presumed that there has been discrimination, it is for the respondent to prove that there has been no breach of the equal treatment principle;⁷⁶ provides for the establishment in each Member State of an organization to promote equal treatment and provide independent assistance to victims of racial discrimination.⁷⁷

1.4.2. EU current migration policies

The following migration policy initiatives have been undertaken recently by the European Union:

Global Approach to Migration and Mobility, 2005: Promoting Policy Dialogues and Cooperation with non-EU Countries.

The Global Approach to Migration and Mobility (GAMM) defines the EU's policy toward and cooperation with non-EU countries. The GAMM includes four objectives: promoting legal migration; preventing irregular migration and trafficking in human beings; promoting the synergy between migration and development; and promoting the protection of asylum-seekers.⁷⁸

The Blue Card Directive, 2009: Promoting Highly Skilled Employment.

The Blue Card promotes employment of highly skilled migrant workers, and promotes respect of their socioeconomic rights and family reunification.⁷⁹

Employers Sanctions Directive, 2009.

This Directive prohibits the employment of illegally-staying third-country nationals in order to fight illegal immigration. It provides the minimum standards on sanctions and measures against employers of illegally staying third-country nationals.⁸⁰

70 Ibid. Article 5.

71 Ibid. Article 18.

72 Ibid. Article 22.

73 The WU Radical Equality Directive 2000/43/EC, Article 3.

74 Ibid. Article 16.

75 Ibid. Article 18.

76 Ibid. Article 21.

77 Ibid. Article 23.

78 http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/legal-migration/work/index_en.htm

79 http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/legal-migration/work/index_en.htm

80 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:168:0024:0032:EN:PDF>

The Single Permit Directive, 2011: Facilitating the Procedures for Work and Residence Permits.

The Single Permit Directive facilitates the procedure for a single working and staying permit and the rights for third-country nationals legally residing in EU destination country, including: working conditions, education and vocational training, social security, tax benefits, housing, etc.⁸¹

Directive on Seasonal Workers, 2014: Promoting Employment of Seasonal Workers.

The Directive⁸² defines the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers, including: preventing exploitation and protecting the health and safety of non-EU seasonal workers; accommodation during their stay; enabling a complaints mechanism for non-EU seasonal workers; the introduction of a facilitated re-entry procedure.

Directive for Intra-Corporate Transfer of Non-EU Skilled Workers, 2014: Facilitating Intra-Corporate Transfer of Skilled Workers.

The Directive⁸³ promotes the transfer and employment of non-EU Skilled Workers with the intention of securing an innovative economy, attracting investment and creating jobs.

European Agenda on Migration, 2015.

The short-term priorities of the European Agenda on Migration⁸⁴ aim to prevent fatalities amongst migrants through rescue operations, dismantling criminal networks and accommodating migrants and asylum-seekers with more solidarity. The mid- and long-term priorities intend to reduce irregular migration, promote legal migration, dismantle smuggling and trafficking networks, ensure a better management of EU borders and more accommodating asylum policies.

81 <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32011L0098>

82 <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014L0036>

83 http://europa.eu/rapid/press-release_IP-10-931_en.htm

84 <http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/>

II. National Legislation for the Implementation of Human Rights of Migrant Workers

The migrant workers' rights in Albania are addressed by the following pieces of legislation: the Constitution of Albania, Labour Code, Law No. 9668, date 18.12.2006, "Labour Migration of Albanian Citizens", Law No. 10428, date 02.06.2011, "On International Private Law", Law No. 108/2013 "On Foreigners", Law No. 121/2014 "Asylum in the Republic of Albania", Law No. 23/2015 "The Foreign Service", and the respective Council of Ministers Decisions and the regulatory framework stemming from these legal acts.

2.1. The Constitution of Albania

- The Constitution of Albania defines the rights of foreigners in Albania and sanctions that collective expulsion of foreigners from Albania is prohibited.
- Individual expulsion is allowed provided the conditions required by the law are satisfied.

2.2. Primary Legislation

The Labour Code: Recent Changes.

The Labour Code is the key piece of legislation addressing labour relations in Albania. The Code regulates the relations of both native and foreign workers, and native and foreign employers.

In December 2015, the Parliament of Albania adopted several changes to the Labour Code. Some of these changes affect foreign workers who are employed temporarily in Albania in the following cases: a) a foreign company sends its own workers in Albania to work for a local company, for a period less than 12 months; b) a foreign company sends its own workers to work for its branch in Albania; c) an employment agency sends recruited foreign workers to work for a local company in Albania.

In all the above cases, the employment relations are regulated by Albanian legislation. However, in the cases when the Albanian legislation is less favourable than the legislation of sending country, the employment relations are regulated by the legislation of sending country.

Law No. 9668, date 18.12.2006, "Labour Migration of Albanian Citizens".

Law No. 9668, date 18.12.2006, "Labour Migration of Albanian citizens" (revised) defines the general conditions of labour migration of Albanians who emigrate for employment and vocational training purposes.

The Law defines the following Albanian emigrants' rights: political rights, the right of representation, the right to benefit from public services, fiscal and customs incentives, the right to obtain the Status of Migrant.

The Law defines also the following Albanian emigrants' obligations: to maintain the motive of emigration, to respect travel requirements, to respect employment procedures in the receiving country, to register in the Migrants Register in Albania.

The Law defines the obligations of the Government to create the following conditions towards emigrants: free movement, gender equality, prohibition of trafficking, non-discrimination, publication of jobs offers, prohibition of false information, education, maintaining connections with migrant communities, promotion of return, administrative facilities, compulsory repatriation of minors, exception from travel tax and airport tariffs, collaboration with receiving countries, agreements on social security and pensions, regulating and monitoring private services to emigrants.

The Law is characterised by the symmetry between protecting the rights of Albanian emigrants and protecting the rights of migrants in Albania.

The Government of Albania has undertaken all responsibilities to protect Albanian labour migrants without having the legal and financial instruments to do that.

The Government of Albania has undertaken all responsibilities to protect foreign labour migrants in Albania establishing the legal and financial instruments to do that.

Law No. 10428, date 02.06.2011, “On the International Private Law”.

This Law abolished Law No. 3920, date 21.11.1964, “The civil rights of foreigners”.

The Law addresses the rights of individuals holding several citizenships and stateless individuals:

- Conditions for marriages of foreigners with Albanians have to respect the Albanian legislation;
- Forms of marriage relations of foreigners with Albanians have to respect the legislation of the country where the marriage is legally recognized;
- Marriage relations;
- Marriage property regime;
- Dissolution of marriages;
- Food obligations for children;
- Parents-children relations;
- Adoption and foster care;
- Property rights of person married with foreigner;
- Intellectual property rights of person married with foreigner;
- Contracts.

The Law No. 108/2013 “On Foreigners”.

The Law No.108/2013 “On Foreigners” improves the legislation on foreigners in Albania towards meeting EU standards.

The Foreigners Law defines the following types of residence permit issued in Albania:

- Temporary resident permit for employees;
- Resident permit for self-employees;
- Resident permit for members of navigation teams;
- Resident permit for high qualified employees - Blue Card AL;
- Resident permit for seasonal workers;
- Resident permit for free of charge trainees;
- Resident permit for youth exchanges;
- Resident permit for voluntary services;
- Resident permit for research activity;
- Resident permit for students of high schools and universities;
- Resident permit for humanitarian cases;

- Resident permit for victims of trafficking of human beings;
- Resident permit for family reunion;
- Resident permit for refugees.

Resident permit for humanitarian cases is granted up to six months for the following reasons:

- Asylum-seekers and refugees;
- Victims of trafficking of human beings;
- Persons who have been exploited by employers;
- People who collaborate with law-enforcement agencies;
- Stateless persons;
- Unaccompanied persons;
- Expectant mother (more than six months).

The Foreigners Law defines the general conditions for the employment of foreigners in Albania, which are the following:

- i)** Albania's legislation allows for and regulates the employment of foreigners in the country. In order to be employed in Albania foreigners should be provided with: a) working permit; b) temporary working certificate up to 60 or 90 days/year; c) permanent working certificate more than 90 days/year; and d) special permission based on international conventions ratified by Albania or defined by Council of Ministers decree.
- ii)** Albania applies the system of quotas. Quotas are defined annually, by 1 October. Work permits are issued above the quotas in cases of:
 - Daily seasonal migrants in the framework of bilateral agreements;
 - Key staff of foreign companies;
 - Employees transferred within companies;
 - Self-employed in their own companies;
 - Contracting services employees;
 - Teachers of minorities' languages
 - Sportsmen;
 - Artists;
 - Employees in non-for-profit organizations;
 - Employees in youth exchanges programmes;
 - University professors and researchers;
 - Employees hired in the framework of international agreements.
- iii)** Albanian employers are allowed to hire foreign employees upon the condition that the number of foreign employees does not exceeds 10 per cent of the total number of employees hired by the employer.

The Foreigners Law defines the following work permit given to foreigners employed in Albania:

- i)** *Work permit "A" for employees:*
 - Work permit "A/P" for employees;
 - Work permit "A/PS" for seasonal work;
 - Work permit "A/TN" for employees transferred within the enterprise/corporate;
 - Work permit "A/S" for students;
 - Work permit "A/NK" for cross-border employment;

- Work permit "A/FP" for vocational training;
 - Work permit "A/SHV" for persons delivering voluntary services;
 - Work permit "A/AF" for family members in the context of family reunion;
 - Work permit "A/KL" for high qualified employees;
 - Work permit "A/SP" for sportsmen;
 - Work permit "A/PSH" for domestic services.
- ii)** *Work permit "B" for independent economic activity:* work permit "B/VP" for self-employed; work permit "B/I" for investors;
- iii)** *Work permit "C" for specific cases;* work permit "C/SHK" for contractual services;
- iv)** Work permit "D" or permanent work permit.

The Foreigners Law addresses and resolves the following issues on the entry, stay, employment and integration of migrant workers in Albania:

i) Link between Residence Permit and Work Permit.

- a)** Resident permit for employed persons is granted in compliance/interdependency with the work permit;
- b)** Resident permit for employed persons can be revoked when the conditions declared by the employed, result to be false.
- c)** Resident permit for employed persons cannot be revoked when the employed person becomes sick or unable to work, loses the job and becomes unemployed because of the changes in the market or falls in financial difficulties, except for cases when: a) unemployment and financial difficulties last more than three months during the last 12 months and the migrant has been working in Albania at least three years or has been self-employed for two years; b) unemployment and financial difficulties last more than 6 months during the past 12 months and the migrant has been working in Albania more than three years or as self-employed more than two years.

ii) Link between unemployment and working permit.

Unemployment and financial difficulties are not a good enough cause to revoke the work permit, except in cases when:

- a)** Unemployment and financial difficulties last more than three months during the last 12 months and the migrant has been working in Albania at least years;
- b)** Unemployment and financial difficulties last more than six months during the last 12 months and the migrant has been working in Albania over three years.

iii) Revocability of work permit.

Work permits can be revoked in cases when:

- a)** It was issued upon false information;
- b)** Migrant becomes a threat to public safety and public order;
- c)** Temporary resident permit has been revoked;
- d)** Migrant stays outside the country more than six months;
- e)** Migrant is employed in a job other than the job which it has been authorized to do.

iv) Migrant's removal.

Migrant's removal is applied for the following reasons:

- a)** Migrant does not meet the conditions for residing in Albania;

- b) Migrant has been punished for a crime for two years or more imprisonment;
- c) Migrant violates the legislation on employment of foreigners in Albania.

v) Migrant's expulsion.

Migrant's expulsion is applied for the following reasons:

- a) Migrant has entered the territory of Albania irregularly;
- b) Migrant has been ordered to leave Albania and has not left or has left and has re-entered the country;
- c) Migrant has been readmitted in another country in the framework of readmission agreement;
- d) Migrant is considered a threat for public order and public safety;
- e) Migrant has been punished for a crime for three years or more imprisonment.

vi) Deprivation from public services.

Public services, except medical emergency services, are denied to foreigners who:

- a) Do not possess a travel document;
- b) Do not prove to have entered the country legally.

vii) Criminal charges.

- a) The court is obliged to inform the Border and Migration Police on court decisions relating to criminal charges against foreigners;
- b) The penitentiary institutions are obliged to inform the Border and Migration Police when foreigners are released from these institutions.

viii) Integration of foreigners.

- a) The law prohibits any kind of direct or indirect discrimination to migrants in the process of employment.
- b) The law prohibits any kind of direct or indirect discrimination to migrants in the process of their social integration.

ix) Punitive measures to foreigners.

Punitive measures to foreigners are applied in the following cases:

- a) Staying in the country without travel documents or failing to apply for resident permit, illegal employment, failing to inform the authorities;
- b) Entering the country irregularly;
- c) Failing to prove the identity;
- d) Exceeds the length of stay in the country;
- e) Failing to present to health inspectorate upon their request;
- f) Changes the motive of their stay in the country;
- g) Establish false marriages.

The Law No. 121/2014 "Asylum in the Republic of Albania".

The Law No. 121/2014 "Asylum in the Republic of Albania" defines the conditions and procedures for granting and revoking the asylum; complementary protection; temporary protection; rights and obligations of asylum-seekers, refugees and persons under temporary and complementary protection; the refugee status; the right for family reunion; conditions for integration of refugees and persons under complementary protection in Albania.

The asylum-seekers enjoy the following rights equally with Albanian citizens: the right of education, work though being provided with one year (renewable) work permit, social assistance, social care,

health care, health insurance, social insurance, housing, family reunion, temporary protection, complementary protection.

The employed asylum-seekers enjoy the same rights as labour migrants.

The Law No. 23/2015, “The Foreign Service”.

The Law No. 23/2015, “The Foreign Service” regulates Foreign Service and consular services to Albanian citizens in foreign countries.

The Law defines the obligation of the Foreign Service to protect the rights and interests of Albanian citizens living abroad and of the Albanian Diaspora.

The Law defines also the obligations of consular services to protect the rights and interests of Albanian citizens in the receiving country.

2.3. Secondary Legislation

The Council of Ministers Decision No. 513, date 13.06.2013, “Criteria and Procedures of Documentation for Entrance, Stay and Treatment of the Foreigners in Albania”.

Decision No. 513, date 13.06.2013, defines the procedures to issue resident permit and work permit and the dependency between resident permit and work permit: issuing resident permit upon having the work permit.

The Decision defines as special condition for issuing the resident permit for working purposes that the wage of labour migrants foreseen in the employment contract should be at least 150 per cent of the wage of natives.

The Decision defines as special condition for issuing the resident permit for students the proof of knowledge of Albanian.

The Decision defines as special conditions for issuing the resident permit for investors that: i) the value of investment should be at least 1 million EURO; and ii) they have to employ at least 10 Albanian workers for at least one year.

The Council of Ministers Decision No. 265, date 07.05.2014, “Exemption from the obligation for being provided with work permit or work Certificate for citizens of Kosovo/UNSC 1244 and citizens of Serbia of Albanian ethnicity”.

The Council of Ministers Decision No. 265, date 07.05.2014, “Exemption from the obligation for being provided with a Work Permit or Work Certificate of citizens of Kosovo/UNSC 1244 and citizens of Serbia who are ethnic Albanians” defines that citizens of Kosovo/UNSC 1244 and ethnic Albanian citizens of Serbia are excluded from the obligation to be provided with a Work Permit or a Work Certificate, unless the employment position is such that it requires Albanian citizenship.

The Council of Ministers Decisions No. 66, 67, 68, 69, 70, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, date 12.02.2014 “Criteria of Documentation and Procedures for Issue, Refusal and Revoke work permit”.

The Council of Ministers Decisions No. 66, 67, 68, 69, 70, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, date 12.02.2014 “Criteria of documentation and procedures for issue, refusal and revoke work permit” define the criteria and procedures of work permit in Albania. Based on these provisions:

- Students are allowed to work up to 20 hours per week;
- Seasonal workers are allowed/obliged to return home daily or weekly;
- Qualified professionals are allowed to obtain work permit upon having a two years contract;
- Foreigners are allowed to obtain work permit for contractual services up to 90 days;

- Foreigners are allowed to obtain work permit for domestic services upon having a contract;
- Foreigners are allowed to obtain a permanent work permit upon having been provided twice with a two year work permit and having lived and worked legally in Albania for at least five years;
- Investors are obliged to invest not less than EUR 200,000;
- Family members of migrant workers can obtain work permit;
- Foreign workers can be employed in jobs in the cases when the job is not fulfilled by: any Albanian unemployed; any foreigner member of any Albanian family; any EU or Schengen area citizen; any family member of foreigners legally residing in Albania; citizen of States which have bilateral agreements with Albania; foreigners enjoying a preferential status to be employed in Albania;
- Foreigners are allowed to obtain work permit for vocational and educational training;
- Foreigners are allowed to obtain work permit as self-employed if their self-employment is beneficiary to Albanian labour market;
- Foreigners are allowed to obtain work permit as sportsmen upon having a contract with a sport club/ employer;
- Foreigners are allowed to obtain work permit as transferred within the company upon the condition that they have a contract with that company;
- Foreigners are allowed to obtain a work certificate for 60 days, a work certificate for 90 days and a permanent work certificate respectively for consulting, teaching, technical, re-creative services; transportation, high level consulting, teaching, humanitarian services; and consulting services to governmental institutions, leaders of religious organizations, members of mission from foreign governments and partner organizations, media reporters, etc.

2.4. Regulatory Framework

The regulatory framework on migrant workers in Albania consists of the following pieces of legislation:

Joint Instruction No. 265, date 25.05.2015, "Collaboration between the Ministry of Interior and State Information Service on the Procedures of Treatment of Foreign Citizens Legally Residing in Albania".

Joint Instruction No. 265, date 25.05.2015, "Collaboration between Ministry of Intern and State Information Service on the procedures of treatment of foreign citizens legally residing in Albania" defines the procedures of treatment of foreign citizens legally residing in Albania. Some of these procedures are the following:

- Application should be submitted not later than 30 days after entering the country or 60 days prior to the expiry of the existing resident permit;
- Applicant is initially provided with temporary resident permit;
- Application is examined by local and central Border and Migration Police (BMP) authorities, State Police, and State Information Service;
- Decision is taken not later than 60 days after application;
- Foreigners with at least a one-year resident permit should be registered in the local Civil Status Register.

Instruction No. 293, date 04.06.2015, "The Procedures of Treatment of Foreign Citizens Illegally Residing in Albania"

Instruction No. 293, date 04.06.2015, "The procedures of treatment of foreign citizens irregularly residing in Albania defines the procedures for the treatment of foreign citizens irregularly residing in Albania. Some of these regulations are the following:

- The procedures are done in the border or inside the territory of Albania from the Border and Migration Authority;
- The procedure lasts no more than 10 hours;
- When there are doubts that the foreigner may be a victim of trafficking, the person is handled by the anti-trafficking authorities;
- When the foreigner is an unaccompanied minor, the person is handled by social services and, in particular cases when it is in the best interest of the child, in closed centres;

Order No. 147, date 09.07.2014, "Declaration for Employment of Citizens of EU, Schengen Area, US, Kosovo/UNSC 1244 and Ethnic Albanians of Serbia"

Order No. 147, date 09.07.2014, "Declaration for employment of citizens of EU, Schengen area, United States, Kosovo/UNSC 1244 and ethnic Albanians of Serbia" facilitates the employment of citizens of the above-mentioned countries in Albania, upon their self-declaration.

2.5. Operational procedures and standards

The standards of employment of foreigners in Albania are in compliance with EU standards on visa issue, employment of legal resident foreign workers, employment of legal resident foreign qualified professionals, repatriation of irregular residents, support to foreigners, victims of human being trafficking, entrance of students, trainees and voluntaries, and equal treatment off foreigners in employment and profession.

The standards of the following EU documents have been incorporated in the Albanian legislation on migrant workers:

- Regulation of European Parliament and Council no. 810/2009, date 13 June 2009, "Code of EU Community on Visas". CELEX 32009R0810;
- Directive of European Parliament and Council 2008/52/EC, date 18 June 2008, "Forecast minimal standards sanctions and measures on employers for legal resident employees from third countries". CELEX 32009L0052;
- Directive of European Council 2009/50/EC, date 25 May 2009, "Conditions of entrance and stay of third countries citizens for overqualified employment". CELEX 32009L0050;
- Directive 2008/115/EC of European Parliament and Council, date 16 December 2008, "Common standards and procedures of Member States for repatriation of illegal residents' third countries citizens". CELEX 32008L0115;
- Directive of Council 2005/71/EC, date 12 October 2005, "Specific procedures for the admission of third countries citizens for the purpose of scientific research". CELEX 32005L0071;
- Directive of Council 2004/82/EC, date 29 April 2004, "Obligation of transporters to provide information on passengers". CELEX 32004L0082;
- Directive of Council 2004/81/EC, date 29 April 2004, "Residence permits to third countries citizens, victims of human being trafficking or subjects of facilitating irregular migration who collaborate with competent authorities";
- Directive of Council 2004/114/EC, date 13 December 2004, "Conditions of admission of third countries citizens for purpose of studies, exchange programmes, free training or voluntary services". CELEX 32004L0114;
- Directive of Council 2003/109/EC, date 25 November 2003, on the status of long-term residents from third countries. CELEX 32003L0109;
- Directive of Council 2003/86/EC, date 22 September 2003, "The right of family reunion". CELEX 32003L0086;

- Council Framework Decision, 2002/946/DÇB, date 28 November 2002, "Reviewing the penal framework for the purpose of strengthening the prevention of unauthorized transit entrances and stay". CELEX 32002F0946;
- Directive of Council 2000/78/CE, date 27 November 2000, which establishes an equal treatment in employment and profession. CELEX 32000L0078;
- Directive 96/71/EC Directive, date 16 December 1996, on transfer of workers in the framework of services delivery. CELEX 31996L0071.

Albania's immigration legislation guarantees the issuing of all typologies of visas foreseen by international conventions.

Albania also implements the visa waiver procedures, based on the principle of reciprocity, for several countries, such as EU Member States, United States, Canada, neighbouring countries and other countries, as decided by the Government.

The time required for a visa issue to enter the country is about 15 days and in specific cases even more.

The visa is revocable when it is proved to have been issued in false conditions and requirements.

Albania's immigration legislation guarantees the issuing of all typologies of residence permits.

Residence permits are temporary, long-term or permanent.

A residence permit is revocable when it is proved to have been issued in false conditions and requirements.

Residence permits are granted to family members after family reunion.

Albania's immigration legislation guarantees the issuing of all typologies of work permits.

A work permit is revocable when it is proved to have been issued in false conditions and requirements.

Work permits are granted to refugees and asylum-seekers.

Work permits are granted to family members after family reunion.

Upon granting the residence and work permits, the Albanian legislation guarantees the economic, social, political and civil rights of all foreigners residing in Albania.

The country has established the necessary institutional framework to guarantee the implementation of economic, social, political and civil rights of foreigners residing in Albania.

The legislation guarantees the decentralization of services and competences on immigration issues, stay, employment, and integration of migrant workers residing in the country.

The rights of migrant workers in Albania are required to be implemented in synergy with their duties and responsibilities.

The implementation of rights and duties of migrant workers in the country is guided by the following principles:

- Respecting human rights;
- Eliminating discrimination on race, colour, ethnicity, language, culture, economic, sex and gender grounds;
- Transparency of the process;
- Integrity and dignity of migrant workers;
- The right of migrant workers to appeal to General Directorate of Border and Migration the decisions taken by regional authorities and to appeal to the court the decisions taken by General Directorate of Border and Migration;

- Granting the right of family reunion and the full rights to migrants' family members. In this respect, the legislation is becoming more liberal. Migrant workers can now bring their family members in the country without completing one year of work and stay in the country;
- The synergy between the residency rights and employment rights or other motives of foreigners legally staying in the country.

The rights of migrant workers are implemented closely linked with the country's safety and public order.

Therefore, the legislation sanctions the right of proper institutions and agencies to deny entrance and refuse visas, remove, and expulse and repatriate the foreigners who create and pose threats to the country's security and public order.

The legislation defines the right of the Government to declare foreigners falling within the above categories *persona non grata* for a period of five years or more.

The rights and duties of migrant workers in Albania are implemented in synergy with the preservation of public health and protection of the health of population from potential risks.

Therefore, the legislation foresees health control procedures and the necessary structures and resources to carry out health checks.

The legislation requires certain financial and economic guarantees to avoid that foreigners residing, working, studying or conducting other economic, social, humanitarian, religious, cultural or other legal activities in the country become a burden to the welfare system.

Migrant workers in Albania enjoy the rights of social integration. This includes, in addition to the right of work, the educational, schooling, cultural, recreational and sports rights.

The rights and responsibilities of migrant workers are implemented and facilitated either by bilateral agreements between the Government of Albania and governments of sending countries, or by ratification of international conventions on migration and labour, such as UN, IOM, ILO and EU standards on labour and migration.

The legislation requires that foreign minors are allowed to enter, reside, study or benefit from social services provided that they are accompanied by parents, legal guardians or specific state institutions.

The legislation defines the facilities of entering and working in Albania for migrant workers of cross-border areas.

The legislation defines the facilities of entering and working in Albania for foreign citizens employees of international organizations.

Migrant workers enjoy the rights to be assisted by interpreters so as to communicate in their native language in case they are unable to communicate in Albanian or in another common language.

III. The Gaps Between the International Conventions and the National Framework

Albanian migration legislation respects the general principles of international migration rights, which are the right of movement, non-discrimination, non-return to the country where the individual is prosecuted, respect for private and family life, and the obligation of the State to readmit its citizens.⁸⁵

However, there are still several legal, policy and institutional gaps in implementing the rights of migrants in Albania.

3.1. Policy gaps

Human rights have become central to Albania's political and public debates, as well as the media. However, there is a discrepancy between addressing human rights, emigrants' rights and migrants' rights in the country. The focus is more on the rights of Albanian nationals rather than on the rights of migrant workers. In addition, the emphasis during public debates and in political discourse on gender equality rarely includes women migrant workers in Albania.⁸⁶

Therefore, Albania's immigration policies need to address more thoroughly the problems and barriers of social and cultural of migrant workers and migrant women in Albania. This need comes from the fact that a considerable part of migrant workers and migrant women come from diverse societies, cultures and languages. In 2014, the majority of foreign workers who obtained the work permit in Albania came from Turkey (52%), China (12%), Canada (8%) and India (2.6%).⁸⁷

Employment policies and legislation on foreigners in Albania prioritize mainly religious missionaries and humanitarian volunteers. Incentives to those who come for employment purposes are limited to free professionals and not to paid workers. Therefore, there is a need to facilitate migrant workers too in some key economic and employment sectors, especially in production and services.

The level of informality among migrant workers has dropped continuously during the last few years: 10 per cent in 2012, 4 per cent in 2013 and 1 per cent in 2014. Combating informality is actually a predominant labour market policy in the country. However, considering the irrelevant informality level among foreign workers, the government should avoid the creation of public perception that anti-informality policies are intrinsically focused on foreign workers. Anti-informality programmes and actions should be focused on foreign employers and foreign companies rather than foreign workers.

The gap between the typologies of employment of migrant workers compared to employment of native workers in Albania is still consistent. In 2014, most of native workers were employed in agriculture (43.3%) and services (22.2%). Meanwhile migrant workers were mostly employed in construction (31%) and services (17%). These diverse typologies should be considered in developing policies of

85 Ikononi, L. Migration law. Training manual (E drejta migratore. Material trajnues), IOM Tirana, 2009.

86 This discrepancy has been assessed by mostly all journalists contacted by the Consultant.

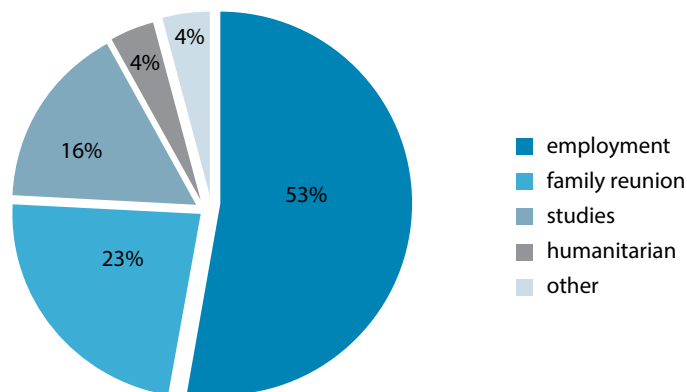
87 Extended Migration Profile of Albania 2012–2014, Ministry of Internal Affairs, Tirana 2015, (Profili i Zgjeruar i Migracionit për Shqipërinë, 2012–2014, Ministria e Punëve të Brendshme, Tiranë, 2015.

health protection and safety at work. Migrant workers' protection policies should address better the key sectors of employment of foreign workers.

Migrants in Albania are mainly employed as waged workers, self-employed and entrepreneurs. The number of waged workers and self-employed individuals has declined between 2012 and 2014, whilst the number of investors has increased. Consequently, immigration policies in Albania should be more responsive to the need to protect the rights of foreign entrepreneurs in the country.

In 2014, foreigners applied for resident permit in Albania for the following reasons: employment (3,652); family reunion (1,610); studies (1,088); humanitarian reasons (241); other reasons (256).⁸⁸

Fig. 3.1. Reasons of applications for resident permit in Albania, 2014



Source: Extended Migration Profile of Albania, 2012–2014.

Generally, more than half of foreigners living in Albania have arrived in the country for employment purposes.

Currently, Albania is implementing the quota system, which becomes effective annually on 1st October. However, considering the small number of foreign workers in Albania compared to the country's workforce and employment, the need for the quota system is disputable.

The number of foreign students enrolled in Albanian universities is increasing. This trend has created the need for more facilitating policies and incentives to promote the admission of foreign students at Albanian universities. The students' diversity will serve as a tool to further advance the prestige of the Albanian university system.

Gender issues have gained special attention in Albania during the last 10 years. Women's participation in legislative bodies, (parliament, municipal and regional councils), as well as in policy- and decision-making levels has been promoted and supported by legal measures, especially by creating legal and electoral instruments in the Electoral Code of Albania. Women are also gaining more power and support in the labour market.

However, there is a gap between emphasizing gender issues in the country's public sphere and in immigration policies. Migrants, particularly women migrant workers, are generally excluded from access, rights and opportunities in the market, public life and politics. Consequently, the perspective of migrant women in policymaking in Albania needs to be empowered.

The perspective of migrant women, too, needs to be empowered also because of international developments in the global and European context.

The concept of "migrant women" refers to different circumstances. It is related to women's circumstances such as generations of immigration, legal status, motives of migration, family status, economic situation and qualification.

⁸⁸ Extended Migration Profile of Albania 2012–2014, Ministry of Internal Affairs, Tirana 2015 (Profili i Zgjeruar i Migracionit për Shqipërinë, 2012–2014, Ministria e Punëve të Brendshme, Tiranë, 2015.

However, there is a difference among the ways gender issues are approached in the Albanian and European context.

In the context of Albania, the debate on gender is focused on political and social participation of well-educated and highly-skilled women. The emphasis on the country's qualified women serves as a barrier to address the issues of women migrant workers in Albania.

Meanwhile in the European Union context, highly-skilled women are neglected in public debates and research, and the main policy focus is on migrant women with lower qualifications.

In the European Union, due to the so-called feminization of migration, political attention has been given to migrant women, with an emphasis on two negative aspects: the low labour market participation and the growing phenomenon of trafficking.

Combating trafficking of migrant women has gained considerable political and policy attention in Albania.

Meanwhile, labour market participation of migrant women is not an issue, as they represent a small percentage of migrant workers in the country. Migrant women consisted of 13.8 per cent in 2012, 11.5 per cent in 2013 and 8 per cent in 2014.⁸⁹ This percentage is irrelevant compared to the increasing number of migrant women in Europe where they consist of more than 50 per cent of all admitted migrants.

Consequently, the migrant woman breadwinner model or woman migrating alone and practising in long-distance parenting are still phenomena at an embryonic level in Albania.

The majority of women immigrating to Albania are well-placed and integrated into the labour market as most of them enter the country upon having arranged employment or family reunion. Usually migrants bring their families in Albania, which has produced a relevant rate of family immigration to the country.

Migration trends in Europe are being influenced by marriage migration, including arranged marriages and the increasing number of internet and mail-order brides. These trends are not an issue in Albania.

There are no obstacles to the empowerment of migrant women due to the legal status they hold when arriving in the country, as almost all women workers enter the country legally.

In the European context, there is particularly one main sector of integration such as employment where migrant women face double discrimination based both on their gender and their ethnic origin. Such a trend has not been noted in Albania. Albania is among the few receiving countries which have adopted the 1990 UN Convention on the Rights of All Migrant Workers and Members of Their Families (entered into force in 2003). While the Migrant Worker Convention has been adopted by sending countries, it has not been adopted by any of the receiving countries so far. As a matter of fact, Albania ratified this Convention from its position as a sending country. However, this ratification is positively impacting the implementation of migrant women in Albania.

3.2. Legislation gaps

The legislation gaps in addressing migration issues in Albania are as follows:

There is a visible gap between addressing international migration of Albanians, domestic migration, and immigration of foreigners in Albania. The Government of Albania has more power in addressing the problems of foreigners in the country and less power in responding to the needs of Albanian migrants in destination countries. The current legal framework fully addresses immigration to Albania but needs to further address migration of domestic workers and international migration from Albania. Albania has a more developed legislation as a receiving country rather than as a sending country.

⁸⁹ Extended Migration Profile of Albania 2012–2014, Ministry of Internal Affairs, Tirana 2015 (Profili i Zgjeruar i Migracionit për Shqipërinë, 2012–2014, Ministria e Punëve të Brendshme, Tiranë, 2015.

Another gap is in addressing diverse groups of foreigners residing or working in Albania, as the actual legislation on foreigners is principally focused on asylum, asylum-seekers and refugees and less on migrant workers' rights. The Albanian legislation and institutions are more sensitive to asylum-seekers and refugees rather than labour migrants in the country.

There is also a gap between main legislation and respective instructions of its implementation. Instructions need to be further developed, particularly in describing the requirements for respecting migrant workers' rights during the implementation of the legal procedures of residency, employment and social integration in Albania.

This stems from two circumstances:

- i) There is no particular focus in addressing migrant workers' rights in the country as the legislation is generally addressing foreigners residing in Albania;
- ii) There is no particular focus in addressing foreign women rights in the country as the immigration legislation does not have any specific reference on gender issues.

Albania's migration legislation has no legal provisions addressing directly the migrants' gender perspective and gender equality. Consequently, there is a need to develop these provisions. However, these issues are generally addressed by the country's legislation on economic and labour relations, which respond to the requirements of the Convention on the Elimination of All Forms of Discrimination against Women, ratified by Albania in 1994.

Every adult member of the family of the foreign worker with a residence permit in the Republic of Albania, for the purpose of family reunification, has the right to be provided with a work permit for one year, on the basis of a contract with an employer or a certificate of employment in the family business.

Albania's legislation allows for the residence permit for family members to be issued at least six months after the residence permit for migrants is issued. This creates an unnecessary expense of time and energy on the part of migrants and their families.

There is a legal gap related to the right of family members to maintain the resident permit in cases of divorce or death of migrant workers. The 2013 Law on Foreigners defines that the residence permits is revoked in cases of divorce if it happens within five years of resident permit issue, whereas in cases of migrant death if it happens within three years of resident permit issue, and in cases when the right of legal guardian to a child is terminated. This provision violates the ICRMW provisions.⁹⁰

There is also a gap related to the right of irregular migrants to join trade unions. The 2013 Law on Foreigners defines that only foreigners legally residing and working in Albania can have access to social and economic integration in Albanian society. This provision also violates the ICRMW provisions.⁹¹

Legislation gaps are principally related to the protection of foreign children, in the country. Legislation defines that irregular migrant children are sent to detention centres generally and not as a last resort or for a short period of time.

Legislation does not define the right of asylum-seekers, refugees and persons to have access to integration programmes, social assistance and services, and housing.

Therefore, the legislation on social welfare should be amended to ensure that asylum-seekers have access to integration programmes and social assistance and services.

The legislation on social housing should be applied to refugees and those receiving subsidiary protection in Albania.

Legislation on education does not define the right of asylum-seekers and refugee children to have access to education.

90 International Convention on the Rights of Migrant Workers (ICRMW), Article 50.

91 Ibid. Article 26.

3.3. Institutional gaps

During the last 25 years Albania has been and still remains a sending country for migrants. However, during this period the country has also been home to foreigners, initially mainly migrant workers or professionals and later students, residing, working and studying in Albania.

Responding to migrant flows, as mentioned previously, the country has developed an almost completed legal framework in addressing immigration issues. However, there is a gap between the legal framework and institutional framework in addressing these issues. The State institutions and agencies are scarcely addressing the rights of migrant workers in Albania.

Public institutions cooperate with the social partners, non-governmental organizations and international organizations for the promotion and implementation of programmes supporting the integration of foreigners into Albanian society.

The National Strategy for Employment and Skills 2014–2020, envisages new policy measures which contribute directly or indirectly to the protection of foreign workers from different forms of discrimination.

Furthermore, the legal and institutional framework on migrant worker rights is not supported by adequate human resources capacities necessary in addressing these issues.

Albania has neither the institutional heritage nor the institutional memory to address immigration. The last time the country was home to foreign workers and professionals was almost a century ago, during the 1920s and the 1930s.

Despite the expansion of the university system in the country, it had no particular focus on graduates majoring in immigration or immigration-related issues.

Police personnel and employees of law enforcement agencies are not properly equipped with the requirements and standards of managing immigration flows, the rights of migrant workers and particularly migrant women.

Immigration issues are principally addressed by central governmental institutions. Local government is scarcely involved in addressing, guaranteeing, supporting or monitoring the rights of migrant workers.

Trade unions in the country have demonstrated no particular interest in protecting migrant workers. A representative from the Confederation of Syndicates of Albania argues that most of migrant workers are not members of the unions.

Employers' organizations have shown a weak sensibility towards respecting the rights of migrant workers in Albania. A representative from the Chamber of Commerce argues that this is linked with the poor organization of unions and the scarce membership of migrant workers in the trade union movement.

The most critical institutional gap is the fact that there are no state institutions in the country to collect, analyse, monitor or deliver information on the respecting or violation of the rights of migrants.⁹²

92 During the survey, the Consultant discovered that except for the Ministry of Interior, Ministry of Social Welfare and Youth and Directorate General Prisons, rarely do state institutions collect, analyse or deliver information on foreign workers.

IV. Institutional Framework and Capacities for Monitoring Rights Protection and Access to Rights for Migrant Workers

4.1. The institutional framework

The institutional framework for the implementation of labour immigration policies in Albania includes the Ministry of Internal Affairs, Ministry of Social Welfare and Youth, Ministry of Foreign Affairs, Ministry of Justice, Ministry of Health, Ministry of Education and Sports, Institute of Statistics and international organizations, such as the International Organization for Migration (IOM), the International Labour Organization (ILO), the United Nations High Commissioner for Refugees (UNHCR), the United Nations Development Programme (UNDP), and the United Nations Children's Fund (UNICEF).

The Ministry of Internal Affairs

During the past few years, the Ministry of Internal Affairs has become the leading governmental institution in managing immigration policies. Such a role is carried out by the Albanian State Police, more specifically the Directorate General for Border and Migration, the Directorate for Citizenship and Refugees, and the Directorate General against Organized and Serious Crime.

General Directorate for Border and Migration is the governmental body which manages the procedures of foreigners' entry and stay in Albania. It operates all over the country through the General Directorate based in Tirana and seven Regional Directorates.

The above directorates of the Ministry of Internal Affairs are responsible for border management and control, entry, stay and resident permit issues, exchange of information on irregular immigration to Albania, combating trafficking in human beings, addressing asylum-seekers, refugees and citizenship issues, etc.

Ministry of Social Welfare and Youth

The Ministry of Social Welfare and Youth develops and monitors employment, labour market and VET policies, labour emigration and immigration, healthy and safety at work, pensions, social assistance and social protection, social dialogue with social partners, trade unions and employers organizations, gender and equal opportunities issues, child protection, elderly, anti-discrimination policies on gender, sex and sexual orientation, minorities, ethnic and religious relations, disability policies and programmes, and youth policies and services.

Ministry of Foreign Affairs

The Ministry of Foreign Affairs, through its units such as the Directorate of Consular Affairs and the Directorate of Public Diplomacy, Partnerships and Diaspora, is responsible for visa policies, international cooperation on migration, and support to Albania's migrants and Diasporas abroad, as well as policies on foreigners in Albania.

Ministry of Justice

The Ministry of Justice is responsible for guaranteeing the right of foreigners to have full access to justice and the justice system at large. Such access is offered by the Chamber of Lawyers and the Legal Aid Office. These services guarantee the respecting of legal procedures for foreigners in courts. The Ministry of Justice is the contact point for appeals made by foreigners for their treatment in the justice system. The foreigners submit their complaints/appeals to their respective embassies in Tirana and the embassies handle the complaints dealing with the Ministry of Justice.

Ministry of Health

The Ministry of Health is responsible for developing, implementing and monitoring health promotion, preventive, diagnostic and health treatment policies and services, guaranteeing access to health and medical services to all citizens (migrants included), based on the schemes available to native population. The key body which deals with services offered to migrants is the Directorate of Public Health.

Ministry of Education and Sports

The Ministry of Education and Sports is responsible for developing, implementing and monitoring the conditions for schooling and educational integration of foreigners in Albania as well as for supporting the education and schooling in Albanian language of Albanian emigrants in receiving countries.

Institute of Statistics (INSTAT)

INSTAT is responsible for the collection, elaboration, analysis, delivery and publication of statistics on emigration of Albanians. INSTAT conducts periodical surveys and produces reports on emigration of Albanians, but not on immigration to Albania.

International Organizations

There are several international organizations which have missions operating in Albania with direct or indirect focus on migrant workers, such as the International Organization for Migration (IOM), the International Labour Organization (ILO), the United Nations High Commissioner for Refugees (UNHCR), the United Nations Development Programme (UNDP) and the United Nations Children's Fund (UNICEF).

The programmes implemented by the above organizations have a direct positive impact on the management of immigration and the rights of migrant workers in Albania. They have given a particular contribution towards developing legislation, supporting the development of IT, conducting and publishing surveys, strengthening institutional capacities and developing human resources addressing migration and migration-related issues.

4.2. Monitoring mechanisms

4.2.1. International monitoring mechanisms

Albania needs to have better monitoring of the implementation of the rights of migrant workers. This should be carried out through better mechanisms.⁹³

The most important monitoring instrument for the implementation of the rights of migrant workers in Albania is the periodic reports submitted to the International Convention on the Protection of the Rights of All Migrant Workers (ICRMW). The government of Albania reports periodically to ICRMW on

⁹³ Compilation prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21, Albania, 13 February 2014.

the status of the rights of migrant workers in the country. However, referring to 2008⁹⁴ and 2010⁹⁵ reports, these documents contain general information on the rights provided by the country's legislation rather than the implementation itself.

Other monitoring mechanisms are the periodic reports submitted to the Committee on the Elimination of Racial Discrimination (CERD), Human Rights Committee, Committee on the Elimination of Discrimination against Women (CEDAW), and Convention Against Torture (CAT).

Albania's most recent report to the CERD was submitted in 2012. It underlined the lack of disaggregated data, distinction between national minorities and linguistic minorities, and the lack of personal documents for Roma people in the country.⁹⁶

Albania's most recent report to the Human Rights Committee was submitted in 2014. It focused on investigations into human rights violations during the January 2011 demonstrations and detention of asylum seekers in Albania.⁹⁷

Albania's most recent report to the CEDAW Committee was submitted in 2012. It underlined cases of violence against women and cases of poor women's access to health care.⁹⁸

Albania's most recent report to CAT was submitted in 2013. It focused on legal safeguards for detainees, investigations of torture, victims' compensation, and data collection.⁹⁹

In 2010, Albania established the Office of the Commissioner for Protection against Discrimination, an independent body for the promotion of equality in the country.

The principal international source on the implementations of the rights of migrants entering Albania irregularly is the reports of UN Special Rapporteur and UNHCR.

The last report of the Special Rapporteur was submitted in 2013.

The last report of the Office of the UNHCR was submitted in 2013.¹⁰⁰

4.2.2. National monitoring mechanisms

Some of the national instruments to monitor the implementation of the rights of foreign workers in Albania are the following: State Labour Inspectorate inspections; National Electronic Register of Foreigners; inter-ministerial working group on Albania's Migration Profile; Albania's Ombudsman investigations; reports of law enforcement institutions; court cases, and reports of local NGOs, such as the Albanian Helsinki Committee.¹⁰¹

Press and media are also periodically reporting on cases of violations of migrants' rights in Albania. Most of these reports contain information delivered by the above mentioned sources.

The National Electronic Register of Foreigners was established on the basis of the legislation on foreigners, by a common Order of the Minister of Foreign Affairs, Minister of Internal Affairs, Minister of Labour and Social Affairs and Chair of State Information Service, No. 408/2, date 01.03.2010. The Register is an electronic database, which collects and maintains the information on the activity of governmental institutions related to entry, stay, employment, integration, transiting and departing from Albania. The Register is an integral part of the Total Information Management System (TIMS) system of the Albanian State Police. The Register is composed of the following modules: i) Border

94 Albania's initial 2009 report was due on 1 October 2008.

95 The 2010 report is the last report submitted by Albania. The next one was due in November 2015.

96 Ibid.

97 Ibid.

98 Ibid.

99 Ibid.

100 Ibid.

101 Information from these sources is described separately in the following sections.

control; ii) E-visa; iii) E-Residence permits; iv) E-Work Permits;¹⁰² and v) E-irregular foreigners. The Register is supplied with information by the following institutions: Ministry of Foreign Affairs, Ministry of Internal Affairs, Ministry of Social Welfare and Youth and the State Information Service.

With the periodical support of IOM, the Government of Albania issues annually Albania's Migration Profile, which describes the recent developments in the fields of both emigration from and immigration to Albania.

Other monitoring instruments for the protection of the rights of migrant workers in Albania, such as the reports of Albania's Ombudsman, press and media reports, press releases of law enforcement institutions, and reports of local NGOs such as the Albanian Helsinki Committee provide sporadic information on the implementation or violation of foreign workers' rights in the country.¹⁰³ There are not bulletins of court decisions in the area of migration and migrant workers.

4.3. Monitoring institutions

Albania's Ombudsman

Albania's Ombudsman is the main public body which monitors the implementation of human rights and the rights of minorities in Albania.

The Ombudsman has the mandate to collect information on the basis of the complaints/cases deal with by the police, secret services, prisons, armed forces, the judiciary system, the prosecution service and the courts.

The requests and complaints procedures are undertaken by an independent administrative investigation, which consists of receiving statements from different persons, applicants, persons who have knowledge of the event, and further examining and obtaining various acts or written documents from the administration.

Ombudsman's focus has been mainly on emigration flows departing from Albania to European Union and North America as receiving countries. In 2014, the Ombudsman conducted a survey on the increasing flows of asylum-seekers from Albania to Germany and other EU countries.¹⁰⁴

However, so far, the Ombudsman has not shown any particular interest in monitoring the migrant workers' rights.

Albanian Helsinki Committee (AHC)

The main strands of the work of the Albanian Helsinki Committee are the following: i) monitoring priority human rights areas; recommendations for improvements and reinstatements of violated rights; ii) lobbying and advocating for improvements in legal framework and law enforcement; iii) raising awareness and increasing capacities of the state administration to enhance their accountability for correct enforcement of laws; iv) prioritizing AHC activities according to human rights areas and geographic reach; v) respecting the right of Albanian voters to vote; vi) respecting the rights of detained, arrested and convicted persons; vii) respecting the rights of national minorities and other communities in the country; viii) respecting the rights of Albanian citizens coming in contact with Albanian judicial bodies; and ix) respecting the rights of Albanian emigrants.

It is important to highlight that there is no direct reference on the protection of the rights of foreigners and migrant workers in Albania.

¹⁰² The module of E-Working permits has not yet been implemented for technical reasons.

¹⁰³ Some of the findings of these monitoring instruments are presented in the following sections.

¹⁰⁴ "The factors that influence the increase of Albanian asylum-seeker flows to Schengen area countries", Albania's Ombudsman, April 2014.

Other Civil Society Organizations

In addition to the Albanian Helsinki Committee, there are several civil society organizations operating in Albania with a particular focus on the protection of human rights, children's rights, elderly rights, women's rights and the rights of other vulnerable groups.

However, so far none of these organizations have either conducted specific surveys or monitored the implementation or violation of the rights of migrant workers' rights in Albania, nor collected regularly information and statistics from official sources such as courts and prosecution offices.

V. Challenges of Implementation/Violation of Rights of Migrants in Albania

5.1. The absence of effectively operating mechanisms to monitor the rights of migrants in Albania

At present, Albania does not have an established operating mechanism in place for the collection of information on the implementation of the rights of migrants in the country. Neither does it have an operational instrument to monitor implementation or violation.

All institutions tasked with the implementation of the rights of migrants or combating the violation of the rights of migrants (mentioned in this report, such as the labour inspectorate, border and migration police, prosecution office, courts, unions, ombudsman, etc.) have failed to collect information on implementation/violation of the rights of migrants. Furthermore, none of these institutions was able to provide any specific information on these issues.

Due to the absence of these data, most of the information included in the Report was collected personally by the consultant, using mostly informal channels and private ties. Given the scarcity of information from state institutions, the consultant did some fieldwork and was directly involved in collecting new information which reflects the reality on the ground.

There is a crying need to establish operating mechanisms to monitor the compliance with and implementation of the rights migrants, as there is a need to provide evidence of cases when migrants' rights were violated, along with reporting this information to international monitoring mechanisms.

5.2. General considerations on the situation of migrants' rights

Albania's legislation favours the entry, stay, employment and study of foreigners in Albania. The treatment of migrant workers reflects the traditional culture of Albanians on respecting and honouring foreigners. Some of the most significant messages of the Code of Lek Dukagjini (*Kanuni i Lek Dukagjinit*) and the Labëria Code (*Kanuni i Labërisë*) are related to the foreigner and friend.

Foreigners residing in Albania consist of no more than 0.3 per cent of the total population of the country.¹⁰⁵

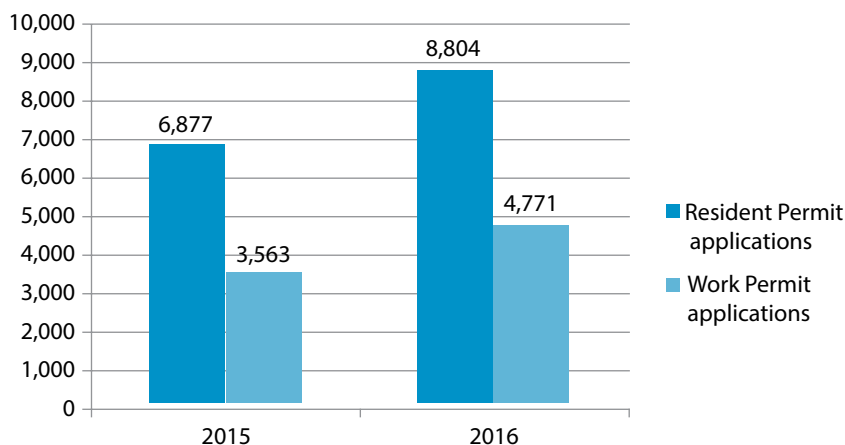
In 2015, there were 6,877 applications for residence permits, and 3,563 of them, or 52 per cent for work permits.¹⁰⁶ There were 4,471 foreign workers in Albania on 1 January 2016 out of a total number of 8,804 foreigners. This means that around 54 per cent of foreigners reside in Albania for employment purposes.¹⁰⁷

105 Extended Migration Profile of Albania 2012–2014, Ministry of Internal Affairs, Tirana 2015 (Profili i Zgjeruar i Migracionit për Shqipërinë, 2012–2014, Ministria e Punëve të Brendshme, Tiranë, 2015).

106 General Directorate of Border and Migration, Albanian State Police.

107 Extended Migration Profile of Albania 2012–2014, Ministry of Internal Affairs, Tirana 2015 (Profili i Zgjeruar i Migracionit për Shqipërinë, 2012–2014, Ministria e Punëve të Brendshme, Tiranë, 2015).

Fig. 5.1. Foreign residents and foreign workers in Albania, 2015–2016



Source: General Directorate of Border and Migration, Albanian State Police, Tirana, 2016.

The information above suggests that there is a need for more attention to issues related to foreign workers in Albania compared to foreign residents in the country.

However, there have been cases of complaints for the violation of the rights of migrant workers in the country. Most of the complaints have related to refusing entry, the granting of resident permits or work permits and expulsion from the country. According to the representatives of the Border and Migration Police, complaints have been mainly against regional border and migration authorities or regional and local employment offices in several districts in the country, such as in Gjirokastra, Korça, Saranda, etc.

Most of the indirect information mentioned in this report comes from the State Labour Inspectorate, Albanian Helsinki Committee, General Directorate of Border and Migration at the Ministry of Internal Affairs, General Directorate Prisons at the Ministry of Justice, Office of Juridical Status at the Ministry of Justice, Court of Tirana, Administrative Court of Appeal in Tirana, and trade unions.

Direct information on the violation of the rights of migrant workers comes from the interviews with individual migrants of the focus groups.

5.3. Rights at work

The principal source of information on the violation of rights at work of migrant workers is the State Labour Inspectorate (SLI).

An SLI representative stated that there are no recorded complaints by foreign workers or self-employed foreigners in the SLI Complaints Register.

Usually, the complaints are made by foreign employers or entrepreneurs. Generally, they complain against the penalties or fines imposed by State Labour Inspectorate inspectors. The complainers have claimed that in some cases fines were not based on facts, whereas on other cases the fines were exaggerated.¹⁰⁸

In 2015, the SLI inspectors checked 1,666 foreign workers and found that only 15 had not been provided with work permits.

The following table describes the results of the inspections of undertaken by SLI inspectors in 2015.

¹⁰⁸ Information from the State Labour Inspectorate.

Table 5.1: Inspections and fines of SLI inspectors during 2015

Nr	Activity	Foreign workers	Workers without work permit	No. of fines	Value in ALL
1	Agriculture	5	0	0	0
2	Mines	547	0	3	4,120,000
3	Productive activities	161	1	4	450,000
4	Basic services	3	2	3	3,520,000
5	Trade	97	6	0	0
6	Construction	743	0	0	0
7	Transport	1	0	0	0
8	Financial and services	38	0	0	0
9	Other services	71	6	0	0
Total		1,666	15	10	8,090,000

Source: 2015 Annual Report of the State Labour Inspectorate.

In 2015, SLI inspectors placed 101 administrative fines; 10 fines related to companies owned by foreign citizens. Six of those fines were appealed to the SLI Appeals Commission and all fines were considered to be in compliance with the law.

This information shows that the working rights of foreign workers are mainly violated by foreign employers and that the Albanian respective agencies, such as the State Labour Inspectorate, serve as a protector and guarantor of the rights of foreign workers.

Based on personal communication with various authorities, it transpires that Albania's trade unions have not shown any particular interest in directly protecting or monitoring the rights of foreign workers. However, according to a representative from the Confederation of Albanian Trade Unions, they have exercised indirect influence in protecting these rights in the context of their pressure to improve country's labour legislation that addresses workers' rights. Another representative from the Ministry of Social Welfare and Youth adds that the last changes to Albania's Labour Code were made in December 2015 and will become effective in July 2016.

Migrants have also highlighted improvements to the procedures of issuing work permits and residence permits for their family members: the residence permit for family members should be issued at the same time as the residence permit for migrant/head of family. In actual fact, the residence permit for family members is issued at least six months after the residence permit for migrants is issued. This change will avoid unnecessary wastes of time and energy by migrants and their families.

The 2013 Law on Foreigners defines that only foreigners legally residing and working in Albania can be members of the trade unions.

5.4. Access to public services

The level of satisfaction for the respect of the rights of migrant workers in Albania reflects the impact of the implementation of national legislation and policies on foreign workers as well as the behaviour of Albanian institutions, employers and co-workers. It also reflects the culture and behaviour of Albanians towards foreigners. The main source used for an assessment of migrants' access to public services, is the perceptions and assessments of members of a focus group with teachers and other employees of Turgut Ozal College in Tirana.

It is their general opinion that Albanians are very helpful to foreigners. They confessed that public offices offer quick and efficient services to foreigners in the country.

Their perception of Albania is much better than expected, particularly because of the respect they get from local population. Some of the migrants actually residing in Albania have had migration experiences in other countries, and they consider working and living in Albania as being their best

migration experience. They consider Albanians the most helpful and friendly native population. In addition, migrants are well-integrated in Albanian society. More specifically, Turkish migrants seem to be the best integrated migrant community in Albania.¹⁰⁹

However, they state that there is a gap between the satisfaction they get from Albanian citizens' behaviour in general and satisfaction from public services, State agencies and institutions. The help they receive from Albanian citizens is at a higher level than the help obtained from public services.

Additionally, migrants suggest that their Albanian co-workers, neighbours or officials should be friendlier to each other. Friendship and socialization they show towards foreigners should characterize relations among themselves, too.

Also, migrants mentioned cases of problems they experience with law-enforcement agencies, such as the police.¹¹⁰

They complained about poor infrastructure, poor hygiene and bad conditions in hospitals in Tirana and the regions, and the non-satisfactory and non-qualitative service offered to them, particularly in regional hospitals. However, they reported a trend of improvement of services in hospitals, especially in Tirana and Shkodra. The most visible improvement is the introduction of the Health Card.

In some cases, foreigners do not seem well-informed on public service fees, and, therefore, they do not know how much they have to pay for certain services.

They reported correct behaviour by local government officials, especially in the Civil Status Offices (*Gjendja Civile*).

They complained about the poor quality and lack of efficiency of public transportation services in Tirana.

They confessed that they do not have any problems in obtaining information on the services available to foreigners in Albania. Despite the language barrier, they have access to information about legal and policy changes as well as services offered. However, they suggest that Albanian television stations should broadcast more information and news in English and other foreign languages.

Migrants confessed that advertisements on Albanian television stations and newspapers should be more careful in broadcasting images that affect negatively migrant children who belong to diverse cultures. Often such information contains dangerous images to children, especially advertisements related to drinks, gambling, sex, etc. They suggest that sex images on newspaper advertisements should be more filtered through broadcasting techniques. Such dangerous information forces foreigners to avoid following Albanian television broadcasts and as a result only watching news editions.

Migrants are critical to the fact that Albanian legislation allows gambling activities in the city. They consider gambling a spoiler of public life and suggest casinos are moved outside cities and towns. Their negative effect on children's education and family's social health should be avoided.

Migrants are aware of the fact that some public services in Albania are corrupt. For example, they are familiar with the public perception that the justice system is corrupt and is under the public pressure to be changed and improved. However, they confessed that they have not had direct bad experiences with the system, especially with the courts. To them, the perception about the corruption of public services seems to be an accredited perception. Most of the information they have on corruption in services in the country comes from media, their contacts with co-workers, friends, neighbours, and parents of their children's friends.

Generally, foreign workers in Albania live mostly in comfortable housing conditions. Sometimes, these conditions are better than those of the local population. This is explained by the higher wages and

¹⁰⁹ Interview with focus-group of teachers and employees of Turgut Ozal College in Tirana.

¹¹⁰ Teachers of Turgut Ozal College in Tirana mentioned a case of road accident in Bulqiza and the first thing the road police did was to ask them to pay the fines for the problems created and not to care on their health.

incomes of foreign workers compared to Albanian workers. They usually rent houses or apartments and have friendly relations with respective landlords, who take care of house services and conditions. Landlords continue to consider foreign tenants as special friends and treat them with the typical friendship and honour Albanians have traditionally extended to foreigners.

Children of migrants in Albania usually attend international or foreign schools. Migrants confess that they do not prefer to attend Albanian schools for the following reasons:

- They do not believe Albanian education will help their further education or their integration in the labour market;
- They find Albanian language difficult to learn;
- Some migrants, such as Turkish and Greek migrants, prefer to send their children to attend respective Turkish and Greek colleges in Albania;
- They are critical of the content and information of school textbooks, which sometimes leads to wrong knowledge and bad behaviour;
- Albanian schools are not competitive;
- High fees of Albanian private schools are not justified given their quality of teaching.

Migrants, both employers and employees, confess that State agencies behave correctly with them. However, they made the distinction between the behaviour of the State Labour Inspectorate and tax inspectors. The former are friendlier and focused on assisting foreign migrants, rather than charging fines and penalties to them as is the case tax inspectors.

Migrants confess that they are generally satisfied with their working conditions. However, they ask for more recreational public spaces for their children, especially during the winter season. Tirana has limited public spaces and entertainment opportunities for children, especially during the winter time.

Migrants make the distinction between the behaviour of people in public spaces and legal and policy framework on regulating such behaviour. They believe that the problem lies with individual behaviour in public spaces, not the activity of institutions. However, they suggested that there is a risk that sometimes people can spoil the system and vice versa.

5.5. Treatment of migrants entering Albania irregularly

The reports of UN Special Rapporteur and the UNHCR are the principal international sources on the implementation of the rights of migrants entering Albania irregularly.

In 2013, the Special Rapporteur on migrants, in addition to the respect for migrants' rights, underlined the need for adequate information on seeking asylum and better documentation of cases seeking protection in Albania.¹¹¹

The Special Rapporteur on migrants recommended that Albania should not subject migrant children to detention, unless this is done in exceptional circumstances only, as a last resort and for the shortest period of time possible.¹¹²

The Office of the UNHCR has asked that Albania provides adequate interpreters to people who request protection in the country.¹¹³

The principal domestic source of statistics on foreign citizens trying to enter Albania irregularly is the Directorate General of Border and Migration Police. According to this source, around 18 per cent of migrants, 471 out of 2,618 have been refused entry to Albania for several reasons, such as lack of

111 Compilation prepared by the Office of the UNHCR in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21, Albania, 13 February 2014.

112 Ibid.

113 Ibid.

documents to prove their identity, previous violation of rules when residing in Albania, lack of financial support, failure to justify their intention to enter the country, etc.¹¹⁴

Another national source of information on the treatment of migrants who enter Albania irregularly is the Albanian Helsinki Committee. During the past few years the Albanian Helsinki Committee conducted three investigative missions in the Albania–Greece border crossing points to monitor the treatment of foreigners entering Albania irregularly.

The first report issued in 2006 addresses the need for more attention and care to Albanian emigrants in the border crossing points.¹¹⁵

- The report found a poor infrastructure in the border crossing points;
- The report suggested the need for increasing professional capacities of police served in border crossing points;
- The report proposed that border police need to be more aware of the specific legislation on border control and management.

The second report issued in 2012 addresses the respect of the rights of both Albanians and foreigners in the border crossing points.¹¹⁶ The report found that:

- Infrastructure of receiving centres in the border crossing points remains poor;
- The basic needs of irregular migrants received in the centre are insufficiently met;
- There are no basic conditions for women;
- Often there is no sufficient food;
- Information service is poor;
- Usually female irregular migrants are dealt with by Albanian women police officers, who consist of 50 per cent of the police staff in the Tirana International Airport and 25 per cent of the police staff in Durres port;
- It was noted that professional capacities of police serving to irregular migrants is increased;
- Police need more training specifically on human rights legislation and procedures of protecting foreign irregular migrants from maltreatment from the police;
- There is good cooperation between the Albanian and Greek police in dealing with irregular migrants who cross the Greek–Albanian border.

The third report, issued in 2015, monitored the procedures of treatment of only foreign citizens who cross the border irregularly with the final aim of entering EU countries, in eight border crossing points in Southern Albania.

- The report mentions that services to irregular migrants received and interviewed in the Day Reception Centres are insufficient to meet their needs for food, accommodation, health services, and information services.
- The report also finds that there are no female police officers to deal with irregular female migrants received in the centres.¹¹⁷

114 Extended Migration Profile of Albania 2012–2014, Ministry of Internal Affairs, Tirana 2015 (Profili i Zgjeruar i Migracionit për Shqipërinë, 2012–2014, Ministria e Punëve të Brendshme, Tiranë, 2015).

115 “More attention on the treatment of Albanian emigrants in the Border Crossing Points”, Conclusions of a survey of the Albanian Helsinki Committee at the Border Crossing Points, April 2006 (Më shumë vëmendje për trajtimin e emigrantëve shqiptarë në pikat e kontroll kalimit kufitar”, Përfundime të vëzhgimeve të Komitetit Shqiptar të Helsinkit në pikat e kalimit kufitar, prill 2006).

116 Report on the monitoring of the rights of citizens in the Border Crossing Points, February 2012.

117 Conclusions on the monitoring carried out in the border points of Saranda, Gjirokastër, Korçë and Pogradec, January 2015.

5.6. Access to the Justice System

Foreigners in Albania are guaranteed, legally and practically, fair treatment in the judiciary system. Both the legislation and procedures reflect the Albanian traditional culture which considers the foreigner a friend who deserves to be paid particular respect and honour.¹¹⁸

The District Courts, the Courts of Appeal and the Supreme Court, do not provide information on cases by nationality/citizenship. The Consultant went through the information provided by the District Court of Tirana¹¹⁹ and the Supreme Court of Albania¹²⁰ and did not find any information on the nationality/citizenship of the cases filed or the cases against.

In addition, it is difficult to identify the cases filed against or by migrant workers, as the respective institutions do not filter the information according to the status of foreign residents in Albania.

However, from the above sources partial information on the cases filed against foreigners or cases filed by foreigners is noticed.

The civil cases filed by migrants in Albania are usually related to the violation of labour relations:¹²¹

- Violation of contractual relations from Albanian companies/employers damaging foreign workers;
- Violation of contractual relations from foreign companies/employers damaging foreign workers;
- Violation of the procedures of hiring/firing foreign workers from Albanian companies/employers;
- Violation of the procedures of hiring/firing foreign workers from foreign companies/employers.

Other criminal cases have been filed on the following issues (ranked according to frequency):¹²²

- Theft;
- Use of violence;
- Denigration;
- Insult;
- Cleaning the proceeds of crime or criminal activity;
- The acquisition of money or goods.

The criminal cases filed against migrants in Albania usually relate to the following issues:¹²³

- Medical error;
- Unauthorized use and disclosure of privileged information;
- Prices manipulations;
- Market manipulations;
- Misuse of powers and competences;
- Prostitution;
- Exploitation of prostitution;
- Theft of electricity or telephone lines;

118 Interview with an official of the Ministry of Justice.

119 Annual Report of the District Court of Tirana, 2014. www.gjykatatirana.gov.al/previewdoc.php?file_id=208 (retrieved on 30 December 2015).

120 Annual Report of the Supreme Court of Albania, 2012. www.gjykataelarte.gov.al/web/Publikime_7_1.php (retrieved on 30 December 2015).

121 Information for the Administrative Court of Appeal, Tirana.

122 Information from the District Court, Tirana.

123 Information from Office of the Prosecutor of the District of Tirana.

- Cleaning the proceeds of crime or criminal activity;
- Driving while intoxicated or without a license;
- Falsification of seals or forms;
- Corruption;
- Self-judgment;
- Falsification of documents;
- Violation of traffic rules;
- Forcing or impeding to cohabit or termination of marriage;
- Insurance fraud;
- Falsifying acts of civil status;
- Smuggling;
- Production and illegal possession of cold weapons;
- Falsifying identity cards, passports or visas;
- Help for irregular border crossing.

Some of the files against migrants have been appealed to the Supreme Court and to the Court of Appeal in Tirana:

- Violation of the procedures of hiring/firing Albanian workers from foreign companies/employers;¹²⁴
- Violation of contractual relations from foreign companies/employers damaging Albanian workers;¹²⁵
- Violation of labour protection rules/safety at work.¹²⁶

Sources from the Tirana Prosecution Office indicate that there are around 10 cases per month filed by foreigners in Albania in relation to criminal charges for the violation of their rights or damage of their interests.¹²⁷

Meanwhile, there are about 60 criminal charges per year against foreigners in Albania filed by the Tirana Prosecution Office. There were 57 criminal charges brought against foreigners in 2015. Criminal charges against foreigners consist in around 0.5 per cent of the total number of criminal charges in the country. Cases filed by foreigners with the Tirana Prosecution Office stand at around 1 per cent of the total number of cases filed in this office.¹²⁸

Complaints by foreigners to the Ministry of Justice for their treatment in courts have been mainly for two reasons:

- Violation of their right to have an interpreter during the entire process;
- The duration of the procedures of their cases.

However, a representative from the Ministry of Justice states that during 2015 there has been only one complaint related to the absence of an interpreter during the process in the court of Tirana.

Another channel for complaints is through the respective embassies in Tirana which take up the complaints with the Ministry of Justice. However, officials from the Ministry of Justice confirm that in 2015 there have not been serious complaints by foreigners on the violation of any right during court cases.

124 Decision of the Supreme Court of Albania, No. 331, date 30.05.2013.

125 Decision of the Supreme Court of Albania, No. 8, date 10.06.2011.

126 Information for the Administrative Court of Appeal, Tirana.

127 Office of Statistics, Office of the Prosecutor of the District of Tirana.

128 Ibid.

5.7. Treatment in penitentiary institutions

The principal source of information on the treatment of migrant workers in penitentiary institutions is the General Directorate of Prisons at the Ministry of Justice. The information refers generally to foreign inmates and there is no specific information on migrant workers separately (as inmates).

According to General Directorate of Prisons, foreign inmates are treated just like their Albanian counterparts. There are no cases of violation of their rights on ethnic or nationality grounds.

Most of the foreign inmates are sentenced for criminal offences, such as involvement in narcotics traffic.

In November 2015, there were 93 foreign inmates in Albanian prisons. Most of them, around 30 per cent were from Kosovo/UNSC 1244, 15 per cent from Italy, 12 per cent from the former Yugoslav Republic of Macedonia, 9 per cent from Greece, and 5 per cent from Romania.¹²⁹

Table 5.2. Inmates in Albanian prisons in November 2015

Nr.	Country	Number of inmates
1	Kosovo/UNSC 1244	33
2	Italy	14
3	Romania	5
4	Spain	1
5	Greece	8
8	United Kingdom	1
9	the former Yugoslav Republic of Macedonia	11
10	Turkey	4
11	Syrian Arab Republic	2
12	Colombia	2
13	Serbia	3
14	Netherlands	1
15	Montenegro	2
16	Croatia	1
17	Bosnia and Herzegovina	1
18	Guinea	2
19	Democratic Republic of the Congo	1
	Total	93

Source: General Directorate of Prisons, Ministry of Justice, December 2015.

As table 5.2 shows, the overwhelming majority of inmates, 90 persons, are men and only 3 out of 93 are women.

Table 5.3. Gender of inmates in Albanian prisons in November 2015

Total	Males	Females
93	90	3

Source: General Directorate of Prisons, Ministry of Justice, December 2015.

Most of the inmates, 41 out of 93, are placed at penitentiary institutions in Tirana, 15 in Fier, 17 in Lezha and the rest in the institutions of Fushë-Krujë, Korça, Kukës, Durrës, Kavajë and Tepelenë.

¹²⁹ Annual Report 2015, General Directorate of Prisons.

Table 5.4. Distribution of inmates in Albanian prisons, November 2015

Nr.	City/institution	Number of inmates
1	Fier	15
2	Tirana/Vaqarr	1
3	Tirana/Ali Demi	3
4	Tirana/Mine Peza	19
5	Tirana/Jordan Misja	18
6	Fushë Krujë	7
7	Lezhë	17
8	Korçë	3
9	Kavajë	1
10	Tepelenë	1
11	Kukës	2
12	Durrës	5
	Total	93

Source: General Directorate of Prisons, Ministry of Justice, December 2015.

The majority of foreigners in Albanian prisons, 66 out of 93, were in custody and the rest, 27 out of 93 were sentenced. The maximum time of sentence is 20 years in prison; the minimum is three years and four months.

Table 5.5. Typology of inmates in Albanian prisons, November 2015

Total	Sentenced	Custody
93	27	66

Source: General Directorate of Prisons, Ministry of Justice, December 2015.

5.8. The right of family members to maintain Residence Permits

The ICRMW Committee in its thirteenth session on 22 November to 3 December 2010, urged the Government of Albania to provide in the next periodic report information on the implementation of the rights of migrant workers. The report concludes with an overview of the main conclusions and recommendations to be considered so as to improve the protection of migrant's rights, such as:

- Respecting Articles 76 and 77 of the Convention related to the obligation of the Government to send communications to the ICRMW Committee;
- Preventing migrant workers and members of their families from suffering from various forms of discrimination in the area of social security;
- Extending migrant workers access to justice through increasing awareness concerning the administrative and judicial remedies available to them;
- Ensuring the renewal of the residence permit to members of the family in case of divorce or in case of death of the migrant worker;
- Ensuring that undocumented migrant workers and members of their families join trade unions.¹³⁰

However, this recommendation has not been considered. The 2013 Law on Foreigners defines that residence permits are revoked in cases of divorce, should this occur within the five year period the resident permit is issued for, whereas in cases of a migrant's death, if it happens within three years of resident permit issue, and in cases when the right of legal guardian to a child is terminated.

¹³⁰ Concluding observations of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families Albania, Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, Thirteenth session, 22 November to 3 December 2010.

VI. Findings and Recommendations

6.1. Findings

In the course of studying the implementation of migrant workers and migrant women rights in Albania, the consultant concluded the following findings:

1. Albania has ratified and is successfully implementing the majority of international conventions on migrant workers. Although it is a typical migrant-sending country, Albania has an almost complete legal framework on migrant workers.
2. The complete legal framework is only partly supported by a institutional framework on migrant workers. Particularly, institutional capacities in addressing migrants' rights are limited.
3. The human resources dealing with migrant workers and their rights are not in coherence with the legal and institutional framework the country has developed, established and improved during the past few years.
4. There are no legal provisions that directly address the migrants' gender perspective and gender equality.
5. In the last years, particular policies and several legal provisions have been drafted so as to promote the employment and protect the rights of women in the labour market in Albania. However, the country has failed to develop and implement legal provisions to specifically promote the employment and protection of the rights of migrant women in the labour market.
6. So far, there have not been any efforts in collecting administrative or research data on implementation, respecting or violation of migrant workers' rights in Albania. This is due to the fact that institutions and agencies addressing immigration issues, particularly migrant workers, do not have the necessary capacities and practices to collect, analyse and deliver this kind of information.
7. Statistics on foreign workers are not collected by administrative sources, neither are quarterly labour market surveys published. Migrant workers are not included in employment, unemployment and labour force balance information.
8. Information provided by official sources on the implementation of and respect for the rights of migrant workers and women migrants in Albania is poor, outward, limited and very general. None of the institutions inform periodically the Border and Migration authorities on challenges migrant workers encounter during their work or stay in the country, as defined by legislation on immigration.
9. The lack of information makes the Border and Migration authorities less powerful in collecting data, analysing the situation and, therefore, recommending legal and policy changes in addressing the rights of migrant workers and women migrants in the country.
10. Data on foreigners in Albania put more emphasis on asylum-seekers, refugees and persons who enter the country irregularly and less so on migrant workers and their social, economic, political and cultural rights.

11. The power of the Ministry of Social Welfare and Youth and its agencies in shaping migration policies and addressing migrant workers and migrant women rights in Albania has been reduced and the power of the Ministry of Internal Affairs and its institutions and agencies has been increased during the last years. The treatment of migrants and foreigners in Albania risk taking on the connotation of a public safety, public order and security issue, rather than of a social, economic, cultural and worker mobility issue.
12. The gap between these opposite trends has negatively affected the process of informing and addressing the rights of migrants, particularly female migrants in the country.
13. Credible information on the implementation of and respect for the rights of migrant workers and female migrants in Albania comes from direct sources, in other words from migrant workers and their families.
14. Local government authorities have shown no or very little interest in migrant workers and the rights of migrant workers living and working in their respective territories.
15. Neither employers' organizations, nor trade unions have shown visible and sustainable interest in protecting migrant workers and their rights, in particular the rights of female migrants in Albania.
16. The most pertinent interest in the rights of migrant workers and female migrants in Albania has been shown by civil society organizations, NGOs, and particularly the Albanian Helsinki Committee and Albania's Ombudsman.
17. The implementation of rights and obligations of foreign workers in the country is guided by the principles of respect for human rights; eliminating discrimination on race, colour, ethnicity, language, culture, economic, sex and gender grounds; transparency of the process; integrity and dignity of foreign workers; the right of foreign workers to appeal to the decisions taken against them; granting the right of family reunion and full rights to their family members.
18. The rights of migrant workers are implemented closely with the country's safety and public order priorities, and the preservation of public health and protection of the health of population from potential risks.
19. The legislation also requires certain financial and economic guarantees so that foreigners residing, working, studying or conducting other economic, social, humanitarian, religious, cultural or other legal activities in the country do not burden the welfare system.
20. The rights and responsibilities of foreign workers are implemented and facilitated either by bilateral agreements between the Government of Albania and governments of sending countries, or by the ratification of international conventions on migration and labour, as well as UN, IOM, ILO and EU standards on labour and migration.
21. The rights of migrant workers and female migrants in Albania are linked with the legal gaps in addressing international migration, domestic migration and immigration of foreigners in Albania.
22. The rights of migrant workers and female migrants in Albania are also related to policy gaps in addressing these issues.
23. The gap in institutional and human resources capacities also influences the implementation of the rights of migrant workers and female migrants in Albania.
24. Albanian television stations broadcast limited information in English or other foreign languages which is insufficient to create adequate access to information for migrant workers.
25. The monitoring instruments and monitoring institutions for the implementation of the rights of migrant workers and female migrants in Albania are limited and not well-developed.
26. The module of E-Working permits, as an important monitoring instrument, has not been implemented yet for technical reasons.

27. The Ombudsman does not make any direct reference to the protection of the rights of migrants in Albania, in addition to the property, housing, consumer or environment rights, and their right to address and require assistance and support from this institution.
28. The Albanian Helsinki Committee rarely makes direct reference to the protection of the rights of migrants in Albania, in addition to the rights of natives, and their right to address and require assistance and support from this institution.
29. The employment of foreigners in Albania is conditioned by requirements on wage policies. As a special condition for issuing the resident permit for working purposes, the legislation defines that the wage of labour migrants foreseen in the employment contract should be at least 150 per cent of the wage of locals.
30. The admission of foreign students at Albanian universities is conditioned by knowledge of Albanian. Proof of good Albanian language skills is defined in the legislation as a special requirement for issuing the resident permit for study purposes.
31. Foreign investors are bound by certain financial requirements. The legislation defines as special requirement for issuing the resident permit for investors that: i) the value of investment should be at least EUR 1 million; and ii) they have to employ at least 10 Albanian workers for at least one year.
32. In 2005, Albania ratified the 1997 Convention on Participation of Foreigners in the Public Life at Local Level, which grants foreigners legally residing in the country the right to vote in administrative elections. However, this right is yet to be implemented.
33. In admitting migrant workers, Albania applies the system of quotas which are defined annually.
34. Judges and prosecutors are not adequately trained to understand the complex nature of law violations by or in relation to foreign citizens and migrant workers in Albania.
35. Police are not adequately trained to understand the context of actions and law violations by foreign citizens and migrant workers in Albania. They particularly need better communication skills.
36. The psychosocial service personnel are not adequately trained to address challenges of foreigners and migrant workers deprived of their liberty.
37. Medical doctors, nurses and hospital and healthcare personnel are not adequately trained to be able to improve health services to foreigners and migrant workers in the country.
38. Prisons personnel do not have not adequate capacities for the treatment of foreign inmates.

6.2. Recommendations

For the purpose of improving the implementation of the rights of migrant workers and female migrants in Albania, the consultant proposes the following recommendations:

1. The treatment of migrants and foreigners in Albania should shift from being addressed as a public safety, public order and security issue, to one that is addressed as a social, economic, cultural and workers mobility issue.
2. The quota system should be abolished given the small number of labour migrants in Albania. There are several arguments which suggest that this is done. Usually, the quota system is applied form receiving countries that deal with huge flows of migrants that threaten to take away the jobs of natives. At present, Albania has very small flows – not more than 0.5 per cent of the country's total numbers of employed persons are foreigners. In addition, Albania is in need of the skills, expertise, and working culture that labour migrants bring to the country.

3. Statistics on foreign workers should be collected by administrative sources, and quarterly labour market surveys published. Both should be analysed carefully and submitted annually.
4. Migrant workers should be included in employment, unemployment and labour force balance information collected and published by INSTAT.
5. Collection of data on implementation, respect for or violation of migrant workers rights in Albania needs to be conducted institutionally and not only as requested by the ICRMW.
6. The collection of data on foreigners in Albania should put more emphasis on migrant workers, particularly on implementation/violation of their social, economic, political and cultural rights.
7. Albania's immigration policies need to address more thoroughly the challenges and barriers of social and cultural rights of migrant workers and migrant women in Albania. This need stems from the fact that a considerable part of migrant workers and female migrants come from diverse societies, cultures and languages.
8. The perspective of female migrants in policymaking in the country needs to be empowered in order to facilitate and improve their social integration.
9. Policies on employment of foreigners in Albania should prioritize and facilitate the treatment of migrant workers in some key economic and employment sectors, especially in production and services.
10. Immigration policies in Albania should be more responsive to the promotion of the rights of foreign investors in the country.
11. Additional facilitating policies need to be implemented in order to promote the admission of foreign students at Albanian universities.
12. Monitoring and reporting on the process of implementation of the rights of migrant workers in Albania suggest the establishment of a specific mechanism, which would respond to ICRMW requirements.
13. In addition to government institutions which prepare the ICRMW reporting, it is suggested that a specific institution carries out regular monitoring of migrants rights. This institution might be Albania's Ombudsman or the Albanian Helsinki Committee or both. In order to do that, the mission of either institution should be reviewed.
14. The Ombudsman should make direct reference to the protection of the rights of migrants in Albania, in addition to property, housing, consumer or environment rights, and their right to address and require assistance and support from this institution.
15. The Albanian Helsinki Committee should make direct reference to the protection of the rights of migrants in Albania, in addition to the rights of natives and Albanian emigrants in receiving countries, and their right to address and require assistance and support from this institution.
16. The module of E-Working permits of Electronic Register on Foreigners which has not been implemented yet for technical reasons should be implemented to guarantee the provision of information/data on employment of foreigners in the country.
17. Albanian migration legislation should develop provisions to directly address gender equality for migrant workers.
18. Albanian migration legislation should develop provisions to specifically promote the employment and protection of the rights of migrant women in the labour market in Albania, in order to address the asymmetry between the rights of Albanian women and the rights of foreign women working in the country.
19. The promotion of the participation of migrant women in the labour market can be realized

- in the following ways: i) develop and implement further measures to promote the access to labour market and improve the working conditions of migrant women; ii) women who have entered in Albania under the family reunification process must be more easily granted the individual right to be employed; iii) information on job offers must be better accessible through publications targeting migrant women; iv) non-qualified migrant women must have more access to professional education and vocational training to acquire new skills so that they are not restricted to low paid jobs; v) the diplomas, qualifications, and professional experience of skilled and highly-skilled women have to be recognized so as to promote their participation in the labour market; vi) Small Medium Enterprise (SME) capacity-building must be offered to migrant women who want to set up their own businesses in Albania.
- 20.** Promoting the participation of migrant women in democratic life and the protection of their basic rights can be realized through: i) increasing their knowledge and awareness about social rights in Albania; ii) informing migrant women about their rights and about the rights that are being infringed during their working experience in Albania; iii) encouraging migrant women to establish contacts with local NGOs in order to be able to develop their access and participation skills; and iv) informing migrant women on health care and other public services in the country.
 - 21.** The gap between the legal and institutional frameworks in addressing the rights of migrant workers can be fulfilled in two ways: i) existing institutions or agencies should expand their competences towards a more comprehensive treatment of migrants in Albania; and ii) the country should establish additional institutions and/or agencies specifically dealing with the rights of migrant workers.
 - 22.** Judges and prosecutors need to be better trained in order to better understand the context and complex nature of actions and law violations by foreign citizens and migrant workers in Albania.
 - 23.** Police need to be better trained in order to better understand the context and complex nature of actions and law violations by foreign citizens and migrant workers in Albania.
 - 24.** The communication of Border and Migration police with foreigners entering the country irregularly needs to be improved through recruitment of personnel that speak foreign languages, offering courses for this purpose, or by hiring part-time persons who speak these languages, because provision of information in the native or in a language a migrant understands is an important human right for foreigners entering Albania irregularly.
 - 25.** The psychosocial service personnel across the country need additional specific training to be able to better address challenges of foreigners and migrant workers, particularly those deprived of their liberty.
 - 26.** Medical doctors, nurses and hospital and healthcare personnel need additional specific training to be able to improve services to foreigners and migrant workers in the country by better understanding their respective health risks and health social determinants as well as the culture's impact on health and illnesses.
 - 27.** Prison personnel need additional and specific training in order to enhance their professional and cultural capacities for the treatment of foreign inmates.
 - 28.** The provision conditioning the issue of resident permit for migrant workers with the requirement that their wage should be at least 150 per cent of the wage of natives needs to be abolished.
 - 29.** The provision conditioning the issue of resident permit for students with the requirement that that they should demonstrate proof of Albanian language skills needs to be abolished, as universities might offer the possibility of learning Albanian during the first year of university studies.

- 30.** The provision which defines that the resident permit is revoked in cases of the divorce if it happens within five years of resident permit issue, in cases of migrant death if it happens within three years of resident permit issue needs to be abolished.
- 31.** The provision which defines that only foreigners legally residing and working in Albania can have access to social, economic and cultural integration in Albanian society needs to be abolished.
- 32.** The special conditions for issuing the resident permit for investors that:
 - i)** the value of investment should be at least EUR 1 million;
 - ii)** they have to employ at least 10 Albanian workers for at least one year need to be changed as follows:
 - the value of investment should be at least EUR 500,000;
 - they have to employ at least 10 Albanian workers for at least three years.
- 33.** The Government of Albania should take actions to implement the provisions of the 1997 Convention on the Participation of Foreigners in Public Life at Local Level, ratified by Albania in 2005, in order to grant to foreigners legally residing in Albania the right to vote in local elections.
- 34.** Albanian television stations, particularly the national broadcaster, should broadcast more information and news in English or other foreign languages in order to increase the access of migrants to information.

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