



**ANALYSIS OF ALBANIAN  
IMMIGRATION LEGISLATION  
AND PRACTICE AS COMPARED  
TO EU AND INTERNATIONAL  
STANDARDS**



# **Analysis of Albanian Immigration Legislation and Practice as compared to EU and International Standards**

**Gap Analysis on Migration Management  
in Albania**

**Tirana, 1<sup>st</sup> January 2004**

Copyright © 2004 International Organization for Migration (IOM)

*All rights reserved. No part of this publication may be produced, stored in a retrieval system, or transmitted in any form by any means electronic, mechanical, photocopying, recording or otherwise without the prior written permission of the publisher.*

# ACKNOWLEDGMENTS

This report has been drafted thanks to the efforts and dedication of the following people:

Thanks go to Plamen Angelov, independent consultant (seconded from the Bulgarian Ministry of Interior). For the Introduction and Conclusion; Elizabeth Warn; For the EU Acquis, Gap Analysis and Recommendations, Plamen Angelov, Sofia Biladeri and Miwa Takahashi; For the Albanian legislation, Luljeta Ikonomi; For the UN Conventions on Stateless persons, Luljeta Ikonomi and Miwa Takahashi; For the UN Convention on Migrant Workers, Miwa Takahashi; and to Matteo Sasso for his support in the international section. Finally, thanks go to Maurizio Busatti, Chief of Mission, IOM Tirana for the overall support to this project.

IOM Tirana wishes to acknowledge the extensive co-operation and assistance received from the officials and staff of all the Ministries and State agencies interviewed in the framework of the Project. In particular, many thanks go to the representatives of the Ministry of Public Order, Mr. Llambi Trushi, Mr. Bashkim Mustafa, Mr. Fatmir Fagu and Mr. Krenar Muco for their continuous support, Mrs. Majlinda Hafizi and Mr. Durim Hatibi from the Ministry of Labour and Social Affairs, Deputy Minister Mr. Sokol Hazizi and Adrian Dvorani from the Ministry of Justice, Mr. Armand Skrapci, Mr. Novruz Binaj from the Ministry of Foreign Affairs, the Minister of State for Integration Mrs. Ermelinda Meksi and specialists of the Department of European Integration, representatives of the Ministry of Local Governance and Decentralisation, the Ministry of Education and Science and the Ministry of Transport and Telecommunication. The Gap Team acknowledges the commitment and support also provided by the Social Insurance Institute and the Labour State Inspectorate and by the representatives of the Employment Office, the Police Commissariat and Border Police in Durres, and officials of the General Directorate of Police in Tirana, met during the field study visits.

Finally, thanks are also given to the representatives from the international community in Albania, in particular from the European Commission Delegation in Tirana.

This report has been prepared by an independent consultant to the International Organization for Migration. Opinions expressed in this document are those of the authors and do not necessarily reflect the views of IOM. Furthermore, IOM does not take responsibility for any inaccuracies caused through translation.

IOM is committed to the principle of humane and orderly migration benefiting migration and society. As an intergovernmental body, IOM acts with its partners in the international community to assist in meeting the operational challenges of migration; to advance understanding of migration issues; to encourage social and economic development through migration; and to uphold human dignity as well as the well-being of migrants.



# CONTENTS

|  |           |
|--|-----------|
| ACKNOWLEDGMENTS .....  | 3         |
| ABBREVIATIONS .....  | 6         |
| EXECUTIVE SUMMARY .....  | 7         |
| <b>I. INTRODUCTION .....</b>   | <b>8</b>  |
| A. Background .....  | 8         |
| B. Scope of the Analysis and the Nexus between other Strategies and Interventions .....                                      | 9         |
| C. Methodology .....   | 9         |
| <b>II. GAP ANALYSIS .....</b>  | <b>11</b> |
| A. EU ACQUIS AND STANDARDS .....   | 11        |
| 1. Entry .....   | 11        |
| 2. Admission .....   | 23        |
| 3. Sojourn .....   | 31        |
| 4. Family Reunification .....  | 37        |
| 5. Unaccompanied Minors .....  | 42        |
| 6. Combating Illegal Migration .....   | 44        |
| 7. Equal Treatment/Non-Discrimination .....  | 53        |
| 8. Return and Removal .....  | 56        |
| 9. Readmission .....   | 58        |
| 10. Migration Data .....   | 61        |
| B. INTERNATIONAL STANDARDS CONCERNING STATELESSNESS .....  | 69        |
| 1. Introduction to International Standards concerning Statelessness .....  | 69        |
| 2. Principles of the Conventions .....   | 70        |
| 3. Albanian Legislation and Gap Analysis .....   | 71        |
| C. UN INTERNATIONAL CONVENTION ON THE PROTECTION OF THE RIGHTS<br>OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES ..... | 78        |
| 1. Introduction to the UN Convention on the Protection of All Migrant Workers .....  | 78        |
| 2. Gap Analysis between the Albanian Legislation and the MWC .....   | 79        |
| 3. Principle of Equality and Non-discrimination .....  | 80        |
| 4. Entry .....   | 80        |
| 5. Residence .....   | 81        |
| 6. Employment .....  | 81        |
| 7. Integration / Family Reunion .....  | 83        |
| <b>III. GENERAL ASSESSMENTS AND CONCLUSION .....</b>   | <b>86</b> |
| 1. LEGISLATION .....   | 86        |
| 2. INSTITUTIONAL FRAMEWORK AND ADMINISTRATIVE CAPACITY .....   | 88        |
| 3. RECOMMENDATIONS .....   | 89        |
| 4. THE DEVELOPMENT OF A NATIONAL STRATEGY ON MIGRATION .....   | 91        |
| 5. CONCLUSIONS .....   | 92        |
| <b>ANNEX I .....</b>   | <b>93</b> |
| List of International Legal Acts .....   | 93        |
| <b>ANNEX II .....</b>  | <b>97</b> |
| List of the Albanian Legislation .....   | 97        |

# ABBREVIATIONS

|               |  |
|---------------|--|
| <b>BCP</b>    | Border Crossing Point  |
| <b>BiH</b>    | Bosnia Herzegovina   |
| <b>CARDS</b>  | Community Assistance for Reconstruction, Development and Stabilisation   |
| <b>CAT</b>    | Convention against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment (1984)  |
| <b>CEDAW</b>  | Convention on the Elimination of All Forms of Discrimination against Women (1979)  |
| <b>CERD</b>   | International Convention on the Elimination of All Forms of Racial Discrimination (1966)   |
| <b>CIREFI</b> | Centre d'information, de réflexion et d'échanges en matière de franchissement des frontières et d'immigration (Centre for Information, Discussion and Exchange on the Crossing of Frontiers and Immigration) |
| <b>CoA</b>    | Constitution of Albania  |
| <b>CoE</b>    | Council of Europe  |
| <b>CRC</b>    | Convention on the Rights of Child (1989)   |
| <b>DCM</b>    | Decision of the Council of Ministers   |
| <b>EC</b>     | European Community   |
| <b>ECHR</b>   | European Convention of Human Rights and Fundamental Freedoms   |
| <b>ECRI</b>   | European Commission against Racism and Intolerance   |
| <b>ENAR</b>   | European Network Against Racism  |
| <b>EO</b>     | Employment Office  |
| <b>ETS</b>    | European Treaty Series   |
| <b>EU</b>     | European Union   |
| <b>FADO</b>   | False and Authentic Documents  |
| <b>FYROM</b>  | Former Yugoslav Republic of Macedonia  |
| <b>GDCS</b>   | General Directorate of the Civil Status Office   |
| <b>ICCPR</b>  | International Covenant on Civil and Political Rights (1966)  |
| <b>ICESCR</b> | International Covenant on Economic, Social and Cultural Rights (1966)  |
| <b>ICITAP</b> | International Criminal Investigative Training Assistance Programme   |
| <b>ILO</b>    | International Labour Organisation  |
| <b>INSTAT</b> | National Institute of Statistics   |
| <b>IOM</b>    | International Organisation for Migration   |
| <b>JHA</b>    | Justice and Home Affairs   |
| <b>LoF</b>    | Law on Foreigners  |
| <b>LSI</b>    | Labour State Inspectorate  |
| <b>MARRI</b>  | Migration, Asylum and Refugees Regional Initiative   |
| <b>MMSU</b>   | Migration Management Support Unit  |
| <b>MoES</b>   | Ministry of Education and Science  |
| <b>MoFA</b>   | Ministry of Foreign Affairs  |
| <b>Mol</b>    | Ministry of Interior   |
| <b>MoLGD</b>  | Ministry of Local Governance and Decentralisation  |
| <b>MoLSA</b>  | Ministry of Labour and Social Affairs  |
| <b>MoPO</b>   | Ministry of Public Order   |
| <b>MoTT</b>   | Ministry of Transport and Telecommunications   |
| <b>MWC</b>    | Migrant Workers Convention   |
| <b>NATO</b>   | North Atlantic Treaty Organisation   |
| <b>NPAA</b>   | National Plan for Adoption of the <i>Acquis</i>  |
| <b>RoA</b>    | Republic of Albania  |
| <b>RP</b>     | Residence Permit   |
| <b>SAA</b>    | Stabilisation and Association Agreement  |
| <b>SII</b>    | Social Insurance Institute   |
| <b>TEC</b>    | Treaty establishing the European Community   |
| <b>TEU</b>    | Treaty on European Union   |
| <b>TIMS</b>   | Total Information Management System  |
| <b>UK</b>     | United Kingdom   |
| <b>UN</b>     | United Nations   |
| <b>UNMIK</b>  | United Nations Interim Administration Mission in Kosovo  |
| <b>WP</b>     | Working Permit   |

## EXECUTIVE SUMMARY

Despite the undisputable improvement in the recent years of the national legal basis, the Albanian legislation in the field of immigration does not yet meet all requirements of the EU *acquis*. The Albanian legislation lacks full internal consistency, which currently impedes the proper and uniform implementation of the legal norms by the relevant institutions. Although the Albanian legal basis seems quite comprehensive in many areas, it still fails to incorporate the overall philosophy of the EU *acquis*. Therefore, there are still gaps and inconsistencies in the Albanian legislation which Albania needs to address in order to achieve the necessary compliance with the EU standards in the field of immigration, and in order to attain the standards required for the Stabilisation and Association Agreement.

Furthermore, there are still administrative and institutional weaknesses that in conjunction with a weak legal basis also create difficulties in meeting the necessary international standards in this field. However, as Albania is not yet an accession country to the EU, emphasis should be placed on defining standards that take account of the Albanian reality, while at the same time moves closer to European integration. This report should be regarded as a first step towards identifying gaps that are to be addressed in a National Strategy on Migration, which is being undertaken through the European Community CARDS funding in 2004.



# I. INTRODUCTION

## A. Background

This report has been prepared within the context of the project entitled “*Gap Analysis on Migration Management in Albania*” (*Gap Analysis*). The Gap Analysis has been undertaken in order to identify legislative and institutional practices concerning immigration into Albania, and to ascertain to what extent the legal and institutional framework in place meet with the requirements for the Stabilization and Association Agreement, which Albania is currently negotiating.<sup>1</sup>

Prior to the opening of negotiations for the SAA, the need to conduct an in-depth gap analysis on immigration has been underlined by various actors and stakeholders, and the existence of gaps in the current legal framework has been acknowledged within the Stabilisation and Association Agreement report of 2003.<sup>2</sup> Relevant governmental institutions, especially the Ministry of Labour and Social Affairs (MoLSA) and the Ministry of Public Order (MoPO), through examination of the current practice, found their legal and institutional framework in the field of immigration to be lacking and initiated discussion about the ways in which it could be improved as well as the revision of the legislation.<sup>3</sup> These observations spurred the need for a more detailed review of the standards in this field of immigration, which commenced within the framework of the IOM project Migration Management Support Unit (MMSU),<sup>4</sup> and it was through this initiative that the Gap Analysis was inspired and initiated.

Other national and regional strategies and initiatives have also prompted the review of the Albanian legislation in the field of immigration. In particular, at the regional level, a review of the legal basis and practice has been urged within the framework of Stability Pact Migration, Asylum and Refugees Regional Initiative (MARRI) where emphasis has been placed on reviewing national legislation as a basis to create regular migration management mechanisms within countries of the region.<sup>5</sup> Such analysis will also act as the starting point in the forthcoming CARDS<sup>6</sup> regional project on the “*Establishment of EU compatible legal, regulatory and institutional frameworks in the field of asylum, migration and visa matters*”<sup>7</sup> which will assist the countries of the region in aligning their migration policies, legislation, procedures, and institutions with the EU *acquis*.<sup>8</sup>

Furthermore, at the national level, the existence of various interrelated strategies and Action Plans has also intensified the need for a complementing intervention in the field of migration in order to bridge the gap between them.<sup>9</sup> Albania has a number of strategies, which border on issues of migration management such as the National Action Plan on Asylum,<sup>10</sup> the National Strategy on Integrated Border Management,<sup>11</sup> the National Strategy on Counter Trafficking,<sup>12</sup> and the draft National Action Plan on Free Movement.<sup>13</sup> However, each of these initiatives only deals with certain categories of migrants, and as such does not yet present a holistic approach to migration management. This analysis will act as the starting basis for a more comprehensive review of migration management.

This report is intended for a wide audience including specialists and non-specialists in the field of migration management. In particular, it is intended as a basis for experts who will be working on the forthcoming National Strategy on Migration, and as such highlights a number of gaps that will be addressed within the development of this Strategy. The report is divided into three main sections. The first section, the introduction, outlines the background, scope, and methodology of the project.

The second section is the Gap Analysis itself, and provides an analysis of the Albanian legislation and implementation of this legislation. This section is divided into sub sections; the first which examines EU

<sup>1</sup> Negotiations for the SAA with Albania officially commenced on the 31 January 2003.

<sup>2</sup> See Stabilisation and Association Report 2003 for Albania, (COM (2003) 139 final). In this report the Commission has suggested matching the eventual legislative amendments with institutional strengthening, notably through a clear definition of the roles of the main institutions and adequate training on migration issues.

<sup>3</sup> Both Ministries have presented amendments for the Law No. 8492 on Foreigners of 1999.

<sup>4</sup> This six-month project has provided technical and logistical support to stakeholders in the field of migration management.

<sup>5</sup> MARRI Programme of Action, Final August 2003. Stability Pact for Southeast Europe.

<sup>6</sup> Community Assistance for Reconstruction, Development and Stabilization Programme.

<sup>7</sup> This project has been presented under the Migration Module, with IOM as the leading agency.

<sup>8</sup> This will be done through a series of seminars, and best practice examples.

<sup>9</sup> IOM Tirana position paper “Shaping up IOM’s Strategy Agenda within Albania’s Migration Management Priorities,” February 2003.

<sup>10</sup> Adopted on 29.08.2003.

<sup>11</sup> Approved by the Decision of the Council of Ministers No. 118, date 27.02.2003.

<sup>12</sup> Adopted in December 2001.

<sup>13</sup> Version as of 08.07.2003.

principles, the Albanian legislation and practice. The second, examines the Albanian legislation and practice within the context of international standards in protection of the rights of stateless persons and migrant workers as outlined in the methodology. Finally, section three provides a general assessment of the legal basis, institutional structure and the administrative capacity of Albania in the field of immigration, and provides some general recommendations for their improvement as well as some general conclusions. It also links the recommendations to application within the context of the National Strategy.

## B. Scope of the Analysis and the Nexus between other Strategies and Interventions

Taking into account existing National Strategies and their scope, the analysis within the scope of this report goes into each of the phases of the *immigration* process from entry to return, as per the standards in EU and international law. However, this report does not analyse the issues of border control, trafficking or asylum, which are all elaborated within the framework of their own strategies or initiatives mentioned previously. Where relevant, the report does indicate the synergies with other strategies.

In undertaking and implementing this gap analysis, due account has been taken of the importance that both the EU and Albania attach to the principle of **free movement of persons**, the latter being especially and growingly concerned about improving the movement of its citizens in the EU.<sup>14</sup> The identification of the gaps and inconsistencies in Albanian immigration legislation, practice and institutional capacity and its subsequent reform to meet EU demands and standards is yet another step towards the eventual achievement of that free movement. However, a clear distinction must be made between **immigration** on the one hand, and **free movement** on the other, issues in which clear and transparent legislation and procedures regarding immigration, and reliable, accountable and efficient institutions capable of implementing and enforcing that legislation, are *sine qua non* conditions for people to be able to move freely between the EU and Albania.<sup>15</sup> This report covers an analysis of immigration, but not of free movement *per se*.

## C. Methodology

The project was undertaken over a period of seven months, between June and December 2003, during which time a team of international and national lawyers undertook the analysis of both the legal and institutional framework, including both EC and international standards. The main methodology employed was a combination of legal textual analysis, study visits, and meetings with the relevant Government Institutions, including the Ministry of Public Order, the Ministry of Labour and Social Affairs, and the Ministry of Foreign Affairs.<sup>16</sup> Furthermore, field visits were also undertaken at a border crossing point, an employment office, a social insurance office and two police commissariats. This methodology of this project has drawn heavily on the experiences of the Phare Horizontal Programme, "Migration Visa and External Border Control" in particular with regard to the method of analysis.<sup>17</sup> This project has been conducted within four phases: pre-study, study, analysis, and elaboration of the final report with a summary of the recommendations. In order to facilitate the reference to and the understanding of the EU *acquis*<sup>18</sup> and the other international standards, the following elements have been elaborated:

- The basic principles underpinning the different aspects of the EU migration policy.
- The EU *acquis* in force (as per *Acquis 2003* consolidated version on JHA matters).
- The possible future EU *acquis* (proposals of the European Commission during the period of the study).
- The Schengen *acquis* in force.<sup>19</sup>

<sup>14</sup> See draft Plan of Measures for the Improvement of the Free Movement of Citizens of 08/07/2003 by the State Minister for Integration

<sup>15</sup> Free movement of EU citizens in Albania means ensuring them the possibility to enter, reside, move and work in Albania on similar terms as nationals and only with the minimum additional administrative or legal obligations required by the fact that they are non-nationals. With that objective in mind, and following the example of enlargement countries, Albanian provisions and practice relating to the different facets of free movement, such as residence, workers' mobility, social security and recognition of qualifications, have to be rendered compatible with the EU *acquis*.

<sup>16</sup> These three are the main Ministries identified with regard to migration management. Study visits and meetings were also organised with the Ministry of Justice, the Ministry of Local Governance and Decentralization, the Ministry of Transport and Telecommunication, the Ministry of Education and Science, the Department for Integration at the Minister of State for Integration, the National Social Insurance Institute, and the State Labour Inspectorate.

<sup>17</sup> This project, implemented between 2001-2002, aimed to assist EC candidate countries to adopt the EU *acquis* in the field of migration.

<sup>18</sup> The *acquis* is the body of common rights and obligations which binds all the Member States together within the EU. It includes both hard-law (legally binding acts) and soft-law (non-binding acts) and comprises: the content, principles and objectives of the Treaties; the legislation adopted in application of the Treaties; the case-law of the Court of Justice of the European Communities; the declarations and resolutions adopted by the EU; all measures relating to, and all acts adopted under, the Common Foreign and Security Policy and the Justice and Home Affairs policy, and the international agreements concluded by the Community and those concluded by the Member States between themselves in the field of EU activities. Explicit references to the *acquis* in the Treaties can be found in Arts. 2, 3, 43 and 44 of the Treaty on European Union.

<sup>19</sup> As defined in Council Decision 435 of 20 May 1999 concerning the definition of the Schengen *acquis* for the purpose of determining, in conformity with the relevant provisions of the Treaty establishing the European Community and the Treaty on European Union, the legal basis for each of the provisions or decisions which constitute the *acquis*

- The basic principles for the protection of migrant workers and stateless persons, enshrined in the legal instruments adopted by the UN.<sup>20</sup>

Within the context of this analysis, the following points were examined:

- The legal basis, including signed and ratified international treaties.
- Institutional structures within the relevant Ministries and at the local level.
- Administrative capacity and, where relevant, training needs.
- Current practice and implementation of legislation.

The methodology used within the framework of this project also takes account of a number of constraints encountered during this study. In particular, it is noted that there is a clear lack of statistical data concerning migratory movements in Albania which has hampered an in-depth analysis of current practice. Thus the focus of the study has been on a comparative analysis of the legal framework. Furthermore, due to the limited duration of this project, it has not been possible to cover all areas of analysis in detail. Where this is the case, it has been highlighted in the report that further information is needed in order to ascertain what the standard of implementation is. Further information will be needed outside the framework of this project, in particular concerning the practical exercise of the rights of the foreigners laid down in the Albanian legislation.

## II. GAP ANALYSIS

### A. EU ACQUIS AND STANDARDS

The community competence to regulate issues of immigration is a relatively new one, which has its legal basis under Title IV of the Treaty Establishing the European Community as it was consolidated by the entry in force of the Treaty of Amsterdam which came into force in 1999. As a consequence, the current *acquis* on immigration, as in other fields of community legislation, is expanding, and as such, legislation does not exist in all spheres of immigration law as is the case in Member States.

The current immigration *acquis* lays down specific measures to create a common European policy on controls and authorisation to enter via the Union's external borders, especially in the areas of control and movement of people and in dealing with asylum seekers and immigration questions. The following section of the report is divided according to thematic issues from entry to return. Each section starts with a summary of the *acquis* in force, followed by analysis of the legal and institutional framework and responsible institutions in Albania. This is followed by an analysis of the gaps/ inconsistencies within the Albanian legislation (where relevant), and gaps in the Albanian legislation as compared to the EU *acquis*. Finally recommendations are outlined.

#### I. Entry

The control of entry at the external borders of the EU and the common visa policy are some of the primary flanking measures for the lifting of the checks at the internal borders and the creation of a genuine area of freedom, security, and justice. For that end the EU policy is governed by the principles of **coherence of legislation, procedures and infrastructure, aimed at assuring a uniform high level of security of the borders meeting the EU/Schengen standards**. Although the common visa policy of the EU does not cover all member states,<sup>21</sup> it complements the control at the external borders. For that reason, it has been considered that the assessment of Albania in this area will be very strict, and the progress in harmonisation of the legislation and practice will be regarded as one of the decisive elements for the signing of the SAA.

The analysis of the entry is divided in three separate, and at the same time, interrelated sections:

- Travel documents.
- Visas.
- Other conditions for entry, including refusal.

##### I.1. Travel Documents

#### EU *acquis*

The EU *acquis* lays down the following requirements and standards regarding travel documents:

- For travel documents to be considered acceptable they need to:
  - Satisfactorily establish the identity and, in most cases, the nationality or citizenship of the holder.<sup>22</sup>
  - Have been issued in accordance with international rules applied by countries or regional and local bodies recognised by all Member States.<sup>23</sup>
  - Not be expired and, furthermore, have a time validity exceeding that of the visa by three months, taking account of the period of use of the visa. In the case of visa-free entry, the travel document should have a date of expiry exceeding by 3 months the maximum permitted stay.<sup>24</sup>
  - Must enable aliens to return to their country of origin or to enter a third country.<sup>25</sup>
  - Be complete and not amended, falsified or counterfeited.<sup>26</sup>

<sup>21</sup> United Kingdom and Ireland opted out of the common visa policy.

<sup>22</sup> See para. 2 of Text adopted by Ministers on 11.06.1992 on acceptable/unacceptable travel documents (hereinafter 1992 Text of Ministers) and Annex 11 of the Common Consular Instructions on visas for the diplomatic missions and consular posts (hereinafter Common Consular Instructions).

<sup>23</sup> See para. 2 of 1992 Text of Ministers, Annex 11 of the Common Consular Instructions and Art. 14 of the Schengen Convention.

<sup>24</sup> See Chapter V, para. 1(3) of the Common Consular Instructions and Art. 13 of the Schengen Convention.

<sup>25</sup> See para. 2 of 1992 Text of Ministers and Chapter VI, para. 5(3) and Annex 11 of the Common Consular Instructions.

<sup>26</sup> See Chapter V, para. 1(3) of the Common Consular Instructions.

- The refugee travel document issued under the 1951 Convention relating to the Status of Refugees and the stateless travel document issued under the 1954 Convention on the Status of Stateless Persons are considered as acceptable travel documents.<sup>27</sup>
- Entry with unacceptable travel documents may be allowed only as an exception when there are compelling humanitarian reasons or national interests.<sup>28</sup>
- Throughout the EU *acquis* concerning travel documents it is stressed that they should fulfil the highest possible requirements with regard to protection against forgery. More specifically, ordinary, official, and short-term passports as well as documents in lieu of passports issued as travel documents, should comply with the minimum security standards laid down in the 2000 Resolution of the representatives of the Member States regarding security characteristics of passport and other travel documents.<sup>29</sup>

### **Legal and Institutional Framework in Albania**

The issue of acceptable travel documents is elaborated in different legal acts in the Albanian Legislation<sup>30</sup> as stated below<sup>31</sup>:

1. Passport or other travel documents that enable identification of the citizenship of the person and which must be valid for 6 months after entry in Albania.<sup>32</sup>
2. Identity card for citizens of those countries to whom, by bilateral agreements, entry with this document is allowed.<sup>33</sup>
3. *Laissez passers* of UN system, Council of Europe, European Union, NATO and other organisations as established in by-laws.<sup>34</sup>
4. *Laissez passers* for children under 16 years old.<sup>35</sup>
5. Border Document.<sup>36</sup>
6. Navigation and Sailing Document only for the sailors and crews of aeroplanes.<sup>37</sup>

In addition, the Albanian authorities consider as valid for travel other documents issued by the Albanian Authorities such as:

1. Passport for travelling abroad for Albanian Citizens.<sup>38</sup>
2. Passport for Foreigners.<sup>39</sup>
3. Card for the Foreigners.<sup>40</sup>
4. *Laissez passer*.<sup>41</sup>
5. Travel Document for the Refugees.<sup>42</sup>

<sup>27</sup> See para. 2 of 1992 Text of Ministers and Annex 11 of the Common Consular Instructions.

<sup>28</sup> See para. 2 of 1992 Text of Ministers.

<sup>29</sup> Resolution of the representatives of the governments of the Member States, meeting within the Council of 17 October 2000 supplementing the resolutions of 23 June 1981, 30 June 1982, 14 July 1986 and 10 July 1995 as regards the security characteristics of passports and other travel documents.

<sup>30</sup> See Art. 9 of the Law on Foreigners, No. 8492 date 27.05.1999; DCM No. 439, date 4.08.2000 "On entrance, stay and treatment of the Foreigners in Republic of Albania" as amended by DCM No. 532/2001, DCM No. 669/2001, DCM No. 253/2002, DCM No. 220/2003, DCM No. 330/2003. See also Joint Instruction No. 1460 date 21.05.2001 and No. 2430 date 14.05.2001 respectively between the Minister of Public Order and the Minister of Foreign Affairs "On the procedures of entry, stay and treatment of the foreigners in Republic of Albania" (hereinafter Instruction 1460).

<sup>31</sup> By the time this report was written, MoPO was working on the draft amendment on the Law on Foreigners. The draft of October 2003 provided for the Passport for the Refugees in addition to the other documents listed below.

<sup>32</sup> See Art. 9 of LoF, Art. 4 of DCM No. 439/2000 and Art. 1 of Instruction 1460/2001.

<sup>33</sup> Ibid.

<sup>34</sup> Ibid.

<sup>35</sup> Ibid.

<sup>36</sup> See Art. 1 of Instruction 1460/2001. So far this document is envisaged only by the Border Agreement between Albania and FYROM "On regulation of the small inter border traffic for the people living in the border zones" which provides that the citizens of both states may cross the border up two times per month, in through the border crossing points without a visa but with a special document issued by the border police (information received in the meeting with the Border Police on 17 July 2003). See also the agreement of December 04 1997 between Albania and FYROM.

<sup>37</sup> See Art. 1 of Instruction 1460/2000.

<sup>38</sup> See Law No. 8668, date 23.11.2000 "On providing passports for travelling abroad to the Albanian Citizens" (hereinafter Law No. 8668/2000). This passport by definition is issued only to Albanian nationals and is the main document, which facilitates travel abroad. The new Albanian Passport bears higher security features. The deadline for replacing the old one is 2005. The categories of Albanian passports are as following: ordinary, service and diplomatic.

<sup>39</sup> See Art. 68 of LoF, Art. 25 of DCM No. 439/2000, Instruction 1460/2001. The passport for foreigners is defined as the travel document issued by the competent Albanian authorities to the foreigners to enable them to travel abroad (see Art. 2 of LoF). It is valid for a period of two years; during this time the foreigners who temporarily leave Albania may use this document for entry. This passport does not constitute proof of citizenship. Article 68 of the LoF determines three categories of foreigners eligible to obtain this passport: a) Foreigners who have a permanent residence permit; b) Foreigners recognised as refugees; c) Foreigners who have obtained either a 5 year residence permit or foreigners of Albanian origin with at least a one year residence permit who have been abided by Albanian legislation and are unable to obtain a passport or any other travel document from the state of origin.

<sup>40</sup> It is issued to foreigners up to 16 years of age who have resided in Albania for more than one year. This document is to be used for travel within Albanian Territory. See Art. 67 of LoF.

<sup>41</sup> Art. 69 of LoF. This document is issued in exceptional cases when the foreigners have lost their travel documents.

<sup>42</sup> See Art. 12(3) of Law No. 8432/1998 "On asylum". See also Art. 1 para. 3 of MoPO Draft amendment on the Law on Foreigners which defines travel document of the refugees.

## **Responsible Institutions**

- The Border Police<sup>43</sup> is the responsible organ<sup>44</sup> to check the travel documents at the Border Crossing Points. The Border Police must: verify the validity of the travel documents; accept or refuse the travel documents; block suspected documents; impose fines; and accompany those persons with suspicious documents to the local Police Commissariats.
- The Office for Passports and Foreigners<sup>45</sup> in the Police Commissariats is the responsible organ for receiving applications for the travel documents issued by the Albanian Authorities.
- Sector for Passports and Foreigners,<sup>46</sup> the Ministry of Public Order (MoPO) is the organ designated by Law to provide Albanian passports to travel abroad. The same sector is responsible for the provision of Cards and Passports for Foreigners.<sup>47</sup>
- MoPO is also responsible for the border documents for the people living in the border zones as provided by the bilateral agreements.<sup>48</sup>
- The Ministry of Foreign Affairs (MOFA) is responsible for Service and Diplomatic Passports.<sup>49</sup>
- The Ministry of Transport and Telecommunication (MoTT) -Gen. Directorate of Maritime Transport, is responsible for the passports of seamen.<sup>50</sup>

## **Gap Analysis**

### **(a) Gap Analysis within the Albanian Legislation and the Implementation in Practice**

#### **List of acceptable travel document**

The Albanian legislation does not contain a full list of acceptable travel documents in any single act. Information on the subject is scattered between different acts, which, furthermore, do not contain appropriate reference to one another. This lack of coherence deprives the Albanian legislation of the necessary clarity and transparency, and obstructs the foreigner's access to information.

### **(b) Gap Analysis between the Albanian Legislation and the EU Acquis**

#### **The guarantee of return**

The Albanian legislation does not specifically lay down that travel documents should guarantee the return of the foreigner; an element required by the *acquis*. Although this is implicit for passports and most other travel documents issued by officially recognised states or international organisations, certain documents are only one-way and do not guarantee the return of their holder.<sup>51</sup>

#### **Validity of the travel document**

Article 9, p. 1, of the LoF merely mentions that the travel document should be valid and recognised by Albania without further specifying that it should be issued by countries or regional and local bodies recognised by Albania. Article 17, p. 2 of the LoF establishes that the time validity of the travel document should exceed, by three months, the time validity of the use and stay of the visa, whereas, according to the *acquis*, it should exceed by three months only the time of use and not that of the stay of the visa. Furthermore, Article 9, (p. 1, a) LoF adds the requirement that the travel document "should be valid until 6 months after the entry in Albania", which is not only incompatible with the *acquis* but also leads to confusion and contradicts Article 17 LoF.<sup>52</sup>

#### **Security of travel documents**

Although the new Albanian passports, introduced in 2002 and planned to replace old ones by the end of

<sup>43</sup> Border Police is under the General Directorate of the Border Police placed under the State Police, MoPO.

<sup>44</sup> As provided by Arts. 71 and 74 of LoF, and Art. 4 paras. 12 and 15 of Law No. 8772/2001 "On the Guard and Protection of the State Border of the Republic of Albania" (hereinafter Law No. 8772/2001).

<sup>45</sup> All the police commissariats in the districts include an Office for Passports and Foreigners that deal with foreigners. It is subordinate to the Office for Foreigners, Sector of Passports and Foreigners in MoPO. In the smaller commissariats where there is not an Office for Passports and Foreigners, a public order police inspector is appointed to deal with foreigners and passports.

<sup>46</sup> This organ is under the Central Directorate of the Public Order Police, MoPO.

<sup>47</sup> Even though the legislative framework that regulates the Cards and Passports for Foreigners came into effect in the year 1999 (LoF, see also DCM No. 439/2000), these documents have not been produced yet. The Sector of Passports and Foreigners states that the delays in the production of a passport for foreigners is due to the fact that: a) There has been no decision taken concerning which department will deal with migration issues within MoPO; b) Lack of requests by foreigners.

<sup>48</sup> See Arts. 3 and 4 of the bilateral agreement concluded between Albania and FYROM. See *supra* no. 36.

<sup>49</sup> See Art. 5 of Law No. 8668/2000.

<sup>50</sup> Information received by the representatives of the Ministry of Transport and Telecommunication on August 11 2003.

<sup>51</sup> A typical example is the *laissez-passer* for leaving the territory of a country, whose citizenship one has relinquished. With it (s)he may not be allowed to enter another state apart from the one that has promised new citizenship.

<sup>52</sup> For example, according to Article 17(2), if the validity of the use of a visa is 6 months, the validity of the travel document should be at least 9 months from the moment of entry into Albania. However, according to Art. 9 (1) (a) the travel document should be valid for just 6 months after the entry into Albania. The two provisions in practice contradict each other, therefore creating a serious gap for people who need to obtain a visa.

2005, present a much higher level of security against falsification and counterfeiting in comparison to the old ones, the rest of the Albanian travel documents still fail to comply with EU security requirements (see also section I.2).

### **Recommendations**

#### **A single list of acceptable travel documents**

All types of acceptable travel documents should be exhaustively enumerated at least in one legislative act. The possibility of publishing or displaying on the Internet the list of all travel documents recognised by Albania as acceptable in English should be considered, in order to facilitate both foreign travellers and carriers. Definition of “valid and acceptable” travel document. A clear definition of a “valid and acceptable” travel document, containing all the elements of the EU definition, should be included in the LoF.

#### **Clarification of the time validity**

The contradiction concerning the required time validity of the travel document should be removed. The LoF should clearly state that the travel document must have a date of expiry exceeding, by 3 months, the timeframe of the use of the visa.

#### **Document security**

The level of security of all Albanian travel documents should be made to comply with EU requirements. A central database of false and counterfeit travel documents should be created in the MoPO. The creation of this database will enable Albania to cooperate more efficiently with neighbouring and other states in combating illegal migration. The necessary steps should be taken to store information about forged documents in electronic format with the long-term vision of exchanging data through the FADO system.<sup>53</sup>

#### **A single act regulating the procedure of issuance of Albanian travel documents**

The types, conditions, and procedure for issuance, renewal, etc. of all Albanian travel documents should be fully laid down in at least one legislative act.

## **I.2. Visas**

### **EU *acquis***

The harmonisation of visa policy is an essential measure in relation to establishing progressively an area of freedom, security and justice. Since 1999, the Community has been in the process of approximating Member States<sup>54</sup> visa legislation and practice and putting together a common legal framework for visas with the aim of reaching the required full harmonisation by the year 2005.<sup>55</sup> The main features of the current visa framework are:

- There is full harmonisation regarding third countries whose nationals are subject to the visa requirement for the crossing of Member States’ external borders, and those whose nationals are exempt from that requirement.<sup>56</sup>
- Member States may provide for exceptions from the visa requirements for: the holders of diplomatic and service passports; the holders of laissez-passer of some intergovernmental organisations; civilian air and sea crew; crew or other helpers in the event of emergency of rescue due to disaster or accident. Foreign school pupils legally residing in a State to which a visa-free regime is applied, and if travelling in the frame of a school excursion accompanied by a teacher, may also be exempt from the visa requirement.<sup>57</sup>
- The different types<sup>58</sup> of visa valid for the entire territory of the Contracting parties of the Schengen Agreement, otherwise called uniform or Schengen visa are:
  - Airport transit visa (A), provided for a stop-over or transfer between two sections of an international flight.
  - Transit visa (B), provided for transits not exceeding five days.

<sup>53</sup> The Computerised image archiving and transmission system (FADO) on counterfeit travel documents set by Joint Action of the Council of 03.12.1998.

<sup>54</sup> The thirteen EU Member States referred to in Art. 1 of the Protocol integrating the Schengen *acquis* into the framework of the EU annexed to the Treaty on European Union and to the Treaty establishing the European Community (Schengen Protocol), Title IV of the Treaty establishing the European Community is not applicable to the UK and Ireland, unless they decide to “opt in” in the manner provided by the Protocol on the position of the UK and Ireland which is annexed to the Treaties.

<sup>55</sup> Art. 61 and 62 of Treaty establishing the European Community.

<sup>56</sup> See Art. 62 of Treaty establishing the European Community, Art. 9 of the Schengen Convention and Council Regulation No. 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement as amended by Council Regulation No. 2414/2001 of 7 December 2001 and Council Regulation (EC) No. 453/2003 of 6 March 2003 (hereinafter Council Regulation No. 539/2001).

<sup>57</sup> See para. 8 of the preamble and Art. 4 of Council Regulation No. 539/2001.

<sup>58</sup> See Art. 11 and 18 of the Schengen Convention and Section I, para. 2 and Section VI, para. 1(7) of the Common Consular Instructions.

- Short-term or travel visa (C), provided for visits not exceeding three months in any half-year from the date of first entry.  
(Group visas of the above types may also be issued for groups of five to fifty people.)
- Long-term visas, meaning visas for stays exceeding three months, continue being national visas issued in accordance with Member State legislation.<sup>59</sup>
- Uniform (Schengen) visas are issued by the diplomatic and consular authorities of the Contracting Parties of the Schengen Convention. Short-term and transit visas may be issued at the border only if an alien has been unable to apply for a visa due to lack of time and for pressing reasons, and only under specific requirements.<sup>60</sup> Such visas may not be valid for more than one entry and their time validity may not exceed 15 days for short-term visas, and 5 days for transit ones.<sup>61</sup>
- The EU *acquis* lays down in detail the requirements, documentation and procedure for the issuance, extension and revocation of the uniform (Schengen) visa.<sup>62</sup> The documentation which has to be presented and verified for the granting of a uniform visa should in any case at least include:
  - A valid travel document, enabling the foreigner to return to the country of origin or to enter any third country.
  - Support documents covering the purpose of the journey, the means of transport and return and the means of subsistence and accommodation.
- The EU *acquis* stresses the need for the uniform format for visas to meet high technical standards of protection against falsification and counterfeiting, and to bear universally recognisable harmonised security features clearly visible to the naked eye.<sup>63</sup> It establishes that visas should be produced in the form of a sticker presenting a series of specific security features.<sup>64</sup>
- The uniform (Schengen) visa may be refused if the conditions laid down by Articles 5 and 15 of the Schengen Agreement are not properly fulfilled.<sup>65</sup> In that case, the *acquis* establishes a duty for the diplomatic and consular authorities to notify the applicant of the refusal to grant the visa or continue with the application, and to inform him/her of the right to examine his/her application. The procedures and channels of appeal against such a negative decision are governed by national law.<sup>66</sup>

### **Albanian Legislative and Institutional Framework**

The importance of a coherent and updated visa system in line with the EU standards is being widely recognised and accepted by the Albanian Authorities, and is reflected in the framework of the draft on the Action Plan for Improvement of the Free Movement of the People.<sup>67</sup> The current Albanian legislation defines visas as an official authorisation issued by the Albanian Authorities to a foreigner to enter Albania. Traditionally, the Albanian visa has been the stamp form only. Only since July 1<sup>st</sup> 2003 has the sticker visa been introduced which has higher safeguards to replace the old one.<sup>68</sup>

The types of visa used in Albania are:

1. Diplomatic visa.
2. Service visa.
3. Ordinary visa.<sup>69</sup>
4. Residence visa.<sup>70</sup>

<sup>59</sup> See Art. 18 of the Schengen Convention, Section I, para. 2(2) of the Common Consular Instructions and Council Regulation No. 1091/2001 of 28 May 2001 on freedom of movement with a long-stay visa (hereinafter Council Regulation No. 1091/2001).

<sup>60</sup> Those requirements are: The foreigner has to hold a valid document authorising him/her to cross the border; (s)he should fulfil the conditions for entry laid down in Article 5(1)(a), (c), (d) and (e) of the Schengen Convention; (s)he should present an unforeseeable and pressing reason for entry, backed where possible by a supporting document (for example, serious and sudden occurrences involving family members, medical treatment, change of destination of aircraft for technical reasons or weather conditions, urgent professional reasons); return to his/her country of origin or onward passage to a third State has to be assured.

<sup>61</sup> See Art. 12 of the Schengen Convention, Part II, Chapter 5 of the Common Manual on External Borders (hereinafter Common Manual), Section I, para. 2(4) and Section II of the Common Consular Instructions and Art. 1 of Council Regulation No. 415/2003 of 27 February 2003 on the issue of visas at the border, including the issue of such visas to seamen in transit.

<sup>62</sup> See Chapter 3, Arts. 9-18 of the Schengen Convention and Section V of the Common Consular Instructions.

<sup>63</sup> See measure 38 of Vienna Action Plan, conclusion 22 of the Tampere European Council, preamble of Council Regulation No. 1683/95 of 29 May 1995 laying down a uniform format for visas as amended by Regulation No. 334/02 of 18 February 2002 (hereinafter Council Regulation No. 1683/95). See also para. 5 of the preamble, and Arts. 1 and 2 of Council Regulation No. 333/02 of 18 February 2002 on a uniform format for forms for affixing the visa issued by Member States to persons holding travel documents not recognised by the Member States drawing up the form (hereinafter Council Regulation No. 333/02) and Council Recommendation of 29 April 1999 on the provisions for the detection of falsified documents in the visa departments of representations abroad and in the offices of domestic authorities dealing with the issue or extension of visas

<sup>64</sup> See Arts. 1, and 2 and annex of Council Regulation No. 1683/95.

<sup>65</sup> See Arts. 5 and 15 of the Schengen Agreement.

<sup>66</sup> See Section V, para. 2(4) of the Common Consular Instructions.

<sup>67</sup> See Chapter III-Visa Policy of the draft of the Action Plan on the Improvement of the Free Movement of the People (hereinafter Draft Action Plan). The report refers to the draft of 08/07/2003.

<sup>68</sup> The legal basis for the sticker visa regime was laid down by Art. 20 of DCM No. 439/2000.

<sup>69</sup> Art. 18 of LoF provides that ordinary visas are divided in these categories: tourist visas, study visas, work visas, health visas, transit visas up to 48 hours, and visas with a timeframe up to 72 hours issued to the foreigners who are subject to prior request for a visa but due to objective/justifiable reasons are presented at the Border Crossing Points without a visa.

<sup>70</sup> This visa is issued to the foreigners who want to stay for a period of more than three months in the Republic of Albania and want to apply for a residence permit. See. Arts. 18 and 19 of LoF.



The timeframe of the visa duration varies from 3 months to 6 months, or one year, according to the type of visa issued.<sup>71</sup> A visa can be extended only once for a period up to half of its initial timeframe.<sup>72</sup> In addition to the timeframe of the visa duration, Albanian visas also contain the 'stay timeframe', which cannot exceed 90 days.<sup>73</sup> The 'stay timeframe' of foreigners who enter Albania without a visa or obtain the visa at the border is up to 30 days and can be extended to 90 days in total.<sup>74</sup> Even though Albania acknowledges the need for termination of the practice of the issuance of visas at the border,<sup>75</sup> at the time when this report was written, this type of visa was still used.<sup>76</sup> Visas at the border are issued based either on bilateral agreements or as transit visas for seamen, aeroplane crews, and road transport crews for a period of up to 24 hours.<sup>77</sup>

### **Responsible Institutions**

- The request for visa is filed at the Diplomatic and Consular Representatives in the country where the applicant is resident or in any neighbouring country if there is not any Diplomatic or Consular Representative in the country of Residence, as well as to the Consular Department, MoFA if, due to the distance, it is not possible to lodge the application in any neighbouring country.<sup>78</sup>
- The Consular Department within MoFA is the responsible organ for approving the issuance of visas.<sup>79</sup> The Diplomatic and Consular missions have the competence to approve the visa on their discretion without prior consultations with the Consular Department (MoFA) only for specific categories of foreigners.<sup>80</sup>
- The Border Police are responsible for issuing the transit visa and the visas at the border on the basis of bilateral agreements.<sup>81</sup>
- The Regional Police Directorate authorities issue 72 hour visas at the border while the Office for Foreigners/Sector for Passports and Foreigners within the Central Directorate of the Public Order Police is the competent authority for the prolongation of the 72 hour visas up to a maximum of 90 days.<sup>82</sup>
- The Local Police Commissariats are responsible for extending the visa by a period of half the original visa<sup>83</sup> except for the prolongation of visas for diplomats, which is under the competencies of MoFA.<sup>84</sup> Police Commissariats are also responsible for the extension of the stay time of the foreigners who enter Albania without a visa.<sup>85</sup>
- The production of the security features of the visa is assigned to MoPO.<sup>86</sup>

### **Gap Analysis**

#### **(a) Gap Analysis within the Albanian Legislation and the Implementation in Practice**

##### **Structure of visa legislation**

The Albanian legislation concerning visas is dispersed between a number of different acts. In several cases, the provisions of these acts either overlap or contradict each other. No proper reference to the other relevant acts is contained in any of the provisions. As mentioned above regarding travel documents,<sup>87</sup> such a lack of coherence deprives the Albanian legislation of the necessary clarity and transparency, is contrary to the principle of legal certainty, and considerably obstructs the foreigner's access to information.

##### **Lack of clear terms**

There are two cases in which, according to the LoF, the Albanian embassies or consulates have compe-

<sup>71</sup> See Art. 16 LoF.

<sup>72</sup> Ibid.

<sup>73</sup> See Art. 16 of LoF, Art. 9 of DCM No. 439/2000. The 'Stay timeframe' is the period a foreigner is effectively allowed to stay in Albania even though the duration of use stay outlined in the visa may be longer.

<sup>74</sup> Art. 8 and 9 of DCM No. 439/2000 as amended by DCM No. 330/2003 and Art. 19 of Instruction 1460/2001.

<sup>75</sup> The Draft Action Plan envisions the termination of the issuance of the visa at the border as not in compliance with the EU recommendations (see Chapter 3 of the Draft dated 08/07/2003).

<sup>76</sup> Art. 4 of Law No. 8772/2001 authorises the Border Police to issue visas or give visa confirmation in accordance with Laws and secondary legislation. See Art. 10 of Instruction 1460/2001.

<sup>77</sup> See Arts. 6 and 8 of DCM No. 439/2000, Arts. 10 and 18 of Instruction 1460/2001. Information provided in the website of MoPO ([www.mpo.gov.al](http://www.mpo.gov.al)) 'For the Foreigners' updated on September 8 2003 mentions that citizens of Montenegro and FYROM enter Albania with Visas obtained at the border.

<sup>78</sup> See Art. 14 of LoF.

<sup>79</sup> See Art. 15 of LoF. Exception is made for visas issued at the border and 72 hour visas.

<sup>80</sup> See Art. 15 of LoF. See also below in this Section- Gap Analysis "Lack of clear terms".

<sup>81</sup> See Art. 4 of DCM No. 439/2000 and Art. 10 and 18 of Instruction 1460/2001. These visas are issued by the Chief of the Border Crossing Police, or by his deputy. At Mother Teresa Airport, visas at the border are issued by the Chief of the Police Commissariat. By the time this report was written, visas at the border were issued for citizens of Montenegro and FYROM, and transit visas were issued for airline crews or seamen.

<sup>82</sup> The chief of the Regional Police Directorate or his deputy are the officials authorised for the prolongation of the 72 hours visa. See Art. 18 of the LoF, DCM No. 439/2000; and Art. 10 of Instruction 1460/2001.

<sup>83</sup> The prolongation should not exceed the timeframe of 90 days from the day of entry.

<sup>84</sup> Prolongation is carried out by the Chief of the Local Police Commissariat or his deputy. See Art. 17 of LoF, Art. 9 of DCM No. 439/2000 and Art. 19 of Instruction 1460/2001.

<sup>85</sup> Ibid.

<sup>86</sup> Art. 20, DCM No. 439/2000.

<sup>87</sup> See Section 1.1 "Travel Documents" in this Report.

tence to approve the granting of visas without further consultations; two of these cases are unclear due to the use of the subjective and vague terms outlined below:<sup>88</sup>

- “Distinguished personalities of the political, social, cultural economic life of the country where they are.”
- Persons in possession of a travel document of “well-known” international organisations.

### **Lack of clear procedure**

The LoF establishes that the visa application may be presented to the Consular Directory within the MoFA if the distance between the country from which the foreigner applies, and that of the closest Albanian embassy or consulate, renders it impossible to apply at that embassy or consulate.<sup>89</sup> The LoF does not further define in any way what distance that might be or what criteria might be used to assess whether a certain distance renders impossible the application to the closest embassy or consulate. Thus, the way is left open to arbitrary and contradictory decisions of the different competent authority in each case. Moreover, the practical details of how an application can be presented to the Consular Directory within the MoFA are not laid down either in the LoF or in the secondary legislation identified.

### **Lack of clear requirements**

The LoF mentions that the foreigner should, as a precondition for the approval of the visa, have sufficient means of living but fails to define the term “sufficient means of living” or what may be regarded as valid proof of the existence of such means.<sup>90</sup>

## **(b) Gap Analysis between the Albanian legislation and the EU acquis**

### **Countries whose nationals are subject to visa requirements**

The Albanian list of countries whose nationals are not subject to a visa requirement<sup>91</sup> is not in line with the EU list. To date, Albania requires visas from the citizens (with ordinary passports) of twenty-three states,<sup>92</sup> and two special administrative regions (Hong Kong and Macao) which are listed in the Schengen positive list, while, on the other hand, applies a visa-free regime to Turkey which is included in the Schengen negative list. It also excludes Bosnia-Herzegovina and Serbia-Montenegro, which are in the Schengen negative list, from visa requirements from June 1<sup>st</sup> to September 30<sup>th</sup> every year.

### **Types of visas**

The types of Albanian visa are not in line with those of the Schengen. The Albanian transit visa can have multiple entries while the *acquis* only permits this in exceptional cases; the short-term visa is not foreseen as such and the airport-transit visa is not foreseen at all. A border visa is established as a separate category of visa, whereas in the *acquis* visas issued at the border are not a special category but transit or short-term visas issued at the border due to exceptional circumstances.<sup>93</sup>

### **Duration of the visas**

There is a gap concerning the calculation of the permitted total length of stay of the foreigner who enters the territory with a visa. The current LoF sets it at ninety days from the first date of entry but fails to specify that it should be ninety days within any half-year from the first date of entry. There is also a gap regarding the total duration of the permitted stay for foreigners who do not need a visa to enter Albania. Although according to the Schengen *acquis* the duration of stay without a visa is three months,<sup>94</sup> as a rule the Albanian legislation allows a stay of thirty days and only provides as an exception the possibility to extend the stay without a visa to ninety days in total. Moreover, the procedure for such an extension is not mentioned.<sup>95</sup>

### **Visas issued at the border**

The Albanian legislation does not strictly limit the cases of visas issued at the border to exceptional circumstances justified by pressing reasons and lack of time as required by the *acquis*. Under Albanian provisions the foreigner is not required to present an unforeseeable and pressing reason for entry, backed where possible by a supporting document, when applying directly at the border. The Albanian legislation

<sup>88</sup> See Art. 15(1) and (5) of LoF.

<sup>89</sup> Art. 14 LoF.

<sup>90</sup> Art. 17 LoF.

<sup>91</sup> See Annex No. 8 of DCM No. 439/2000 as amended by DCM No. 330/2003.

<sup>92</sup> Andorra, Argentina, Bolivia, Brazil, Brunei, Chile, Costa Rica, Cyprus, Guatemala, Holy See, Honduras, Israel, Malta, Mexico, Monaco, New Zealand, Nicaragua, Panama, Paraguay, Salvador, Singapore, Uruguay and Venezuela.

<sup>93</sup> The MoPO is currently in the process of drafting amendments to certain sections of the LoF, including the visa section. Although the latest draft (October 2003) of the amendments considerably approximates LoF provisions to the EU *acquis*, full compliance has yet to be reached.

<sup>94</sup> Art. 5, para. 1 of the Schengen Convention.

<sup>95</sup> The provision establishing the possibility for the extension of the stay without a visa is under the article establishing the procedure for the extension of the stay with a visa, so it could be supposed that the same procedure is followed for both extensions. Yet this is not explicitly laid down and creates confusion.

actually establishes as a rule that the citizens of FYROM and Montenegro will enter the territory of Albania with a visa issued to them at the border. Apart from the gap concerning the unjustified issuance of the visa at the border per se, there is also a contradiction concerning the duration of the permitted stay with a visa. The LoF lays down that the permitted stay with a visa is 90 days but in the by-laws it is mentioned that persons with visas issued at the border are only permitted to stay thirty days and only have a possibility to extend that period to ninety days.

### **Competent authority**

The competent authorities for the determination and implementation of the visa policy are established in line with the EU *acquis*. However, due to the common practice of issuance of the visa at the border by the Border Police, which belongs to the MoPO, it appears that the leading role is assigned to the MoPO and not to the diplomatic and consular missions, which belong to the MoFA.

### **Conditions for refusal and revocation**

Some of the grounds for refusal of visas mentioned in Article 5 LoF are unclear and incompatible with the *acquis*.<sup>96</sup> The Albanian legislation does not at all define the grounds and the procedure for the revocation of a visa.

### **Protection of visas against falsification or forgery**

It has not been possible to assess the level of security of the new visa sticker, which was introduced on July 1<sup>st</sup> 2003, replacing the previous stamp one.

### **Recommendations**

#### **Structure of visa legislation**

The adoption of a single act regulating in detail the entire procedure of issuance, refusal, prolongation and revocation of all kinds of visas is necessary. Such an act would render Albanian visa legislation clearer, more transparent, and more easily accessible to both foreigners and to the staff of the MoFA and MoPO. If and when such an act is adopted, the relevant reference should be inserted in the LoF. If the possibility of applying to the Consular Directory of the MoFA due to distance is maintained, that distance should be defined and the details of lodging such an application added.

#### **Clarification of terms**

The subjective terms used in Article 15 LoF should be replaced by more precise and objective ones or complemented with appropriate definitions.

#### **Clarification of requirements**

The term "sufficient means of living" should be defined and the documentation susceptible to be used as evidence for the existence of such means mentioned. A reference to the evidence mentioned in Article 9 LoF could cover the need for a definition of appropriate evidence.

#### **Countries whose nationals are subject to visa requirements**

It is recommended that, if national interests require Albania to preserve the visa-free regime for countries included in the Schengen negative list or, vice versa, to keep the visa regime for States included in the positive list, it ought to formulate and present the reasons for that policy during negotiations with the EU. This should be supplemented by the adoption of a long-term timetable listing the planned steps for full harmonisation of its visa policy with that of the EU. Moreover, a reference to the by-law containing the list of foreigners who should or should not be provided with a visa and of those who do not ought to be included in the relevant articles of the LoF.

#### **Harmonisation of the types of visas**

Albania should harmonise its types of visa with those of the Schengen.<sup>97</sup>

#### **Duration of the visa**

The LoF should lay down that the total duration of the stay, both of the short-term visa holder and of those persons who are not required to have a visa, should be ninety days within any half-year from the first date of entry.<sup>98</sup>

---

<sup>96</sup> This point is later elaborated in detail, in Section 1.3 of the Report.

<sup>97</sup> *Supra*, no. 93.

<sup>98</sup> This gap has been removed by the October 2003 draft amendment of the MoPO.

## Issuance of visas at the border

The issuance of visas at the border should be permitted only in the cases and following the conditions laid down in the EU *acquis*. The Law should define this case as an exception to the general rule.

### Responsible Institutions

If compliance with the *acquis* regarding visa issuance at the border is achieved, cases of issuance at the border will be reduced to the necessary minimum, while the visa competence and workload of the MoFA will increase. The following measures could be taken to strengthen the institutional framework in that case:

- A specialised visa unit/centre could be established in the Juridical, Consular and Treaties Department of the MoFA with the task of assessing and taking decisions on visa applications.
- The MoPO should forward all the information about the visas issued or prolonged by the competent police authorities to the visa database of the MoFA.
- The Border Police staff at the BCP will need adequate training, in order to be able to identify the exceptional cases in which a visa should be issued at the BCP.

### Provisions about the refusal and revocation of the visa

The grounds for the refusal of visas should be in line with the *acquis*, and should be clearly and exhaustively regulated under a specific article in the visa section of the LoF.<sup>99</sup> Clear and comprehensive provisions should also be adopted in the LoF about the grounds and the procedure for the revocation of visas. In principle, the grounds should be the same as for the refusal of issuance, plus fraudulent information or documentation presented during the application for a visa.

### Gradual enhancement of the security features of the Albanian visa sticker

Progress in the area of protection of the Albanian visa sticker against falsification should be sustainable and its security should be gradually enhanced in order to reach the level of protection of that of the Schengen.

## 1.3 General conditions of entry and refusal

### EU *acquis*

- In order to be granted entry into the territories of the Contracting Parties of the Schengen Convention, for stays not exceeding three months, a foreigner has to fulfil the following general requirements:<sup>100</sup>
  - Possession of a valid travel document.
  - Possession of a visa (if required).
  - Documents justifying the purpose of the intended stay, if necessary.<sup>101</sup>
  - Sufficient means of subsistence or demonstration of the possibility to acquire them lawfully (both for the stay and the return).<sup>102</sup>
- A foreigner who does not fulfil all the above conditions must be refused entry into the territories of the Contracting Parties unless a Contracting Party considers it necessary to derogate from that principle on humanitarian grounds, on grounds of national interest, or because of international obligations.<sup>103</sup> Apart from the cases in which entrance is refused because the above mentioned-requirements are not fulfilled, entry can also be refused if it is considered that the foreigner represents a threat to national security, external relations, public order and public health, or a potential financial burden to the state. A threat to national security, external relations, public order may in particular exist where:<sup>104</sup>
  - A foreigner has been convicted of an offence carrying a custodial sentence of at least one year.
  - There are serious grounds for believing that (s)he has committed serious offences, including the direct or indirect sale of narcotic drugs and psychotropic substances, or that (s)he intends to commit such offences.
  - (S)he has been the subject of a deportation, removal or expulsion measure and the measure is accompanied by an actual prohibition on entry or residence, or entails such a prohibition.
- The decision to refuse entry, which is taken by the authority empowered to do so by national law, is effective immediately or, where appropriate, on expiry of the time limit laid down by national law. The foreigner has to be notified of the decision and (s)he should be informed of the procedures for appeal. When refusing entry, the checking officer affixes an entry stamp onto the passport, cancelled by an indelible cross in black ink. Any refusal of entry must be recorded in a register or on a list stating identity, nationality, the references of the document authorising the alien to cross the border, and the

<sup>99</sup> See further down, Recommendations of Section 1.3 of the Report.

<sup>100</sup> Art. 5 of the Schengen Convention.

<sup>101</sup> See Part I, para. 4(1) of the Common Manual.

<sup>102</sup> In the case of entry for family reunification, it is the sponsor that may have to provide evidence of sufficient resources for him/her self and his/her family and not the family members as well, see Art. 7 of Council Directive No. 86/22 September 2003 on the right to family reunification (hereinafter Council Directive No. 86/2003).

<sup>103</sup> Art. 5 of the Schengen Convention.

<sup>104</sup> See Arts. 2, 5, 6 and 96 of the Schengen Convention and Part I, para. 4 of the Common Manual.

reason for, and date of, refusal of entry. If there are grounds both for refusing an alien entry and arresting him/her, the judicial authorities responsible must be contacted to decide on the action to be taken in accordance with national law.<sup>105</sup>

- The rights to good administration and to appropriate, clear, simple and transparent channels of appeal are principles common to all Member States and essential elements of the EU acquis and should, therefore, be taken into account regarding entry and refusal.<sup>106</sup>
- The acquis lays down detailed provisions on border checks, which define the uniform standard principles that should govern border checks, the purpose that such checks should serve and the procedures according to which they should be carried out.<sup>107</sup>

### ***Albanian Legislative and Institutional Framework***

The Albanian legislation makes the entrance of foreigners and non-asylum seekers in Albania subject to prior possession of valid travel documents and visas (if the foreigner is a citizen of a Sstate subject to prior visa requirement).<sup>108</sup> Foreigners must also prove possession of sufficient means of living.<sup>109</sup> Exemption from this requirement is granted to refugees and to those who enter Albania to meet their family members.<sup>110</sup> In line with the practice of EU states, foreigners may also be asked to show the necessary documents that support the motive of their entrance.<sup>111</sup>

The border authorities are entitled to refuse entrance to foreigners even if the above-mentioned conditions are met, on the basis of national and public security.<sup>112</sup> Refusal of entry can be applied to those who:

- a) Act or make propaganda against the integrity, national and public security and constitutional order.
- b) Have been sentenced for crimes for which law foresees a punishment not less than 5 years in prison.
- c) Are members of terrorist organisations who violate the constitutional order, and support actions that are against any organised form of governance.
- d) Are wanted by international organs for crimes against humanity, war crimes, etc.
- e) Constitute a threat or infringe the relations of Albania with other Sstates.
- f) Are founded suspects that enter or stay in the territory of Albania to commit a crime, or when their entrance or stay constitutes a threat to the State.
- g) Are engaged in organised crime, prostitution, traffic of narcotics, illegal trafficking of clandestines in Albania or their transiting, or in any other illegal trafficking.

Albanian law provides that the request of a foreigner to enter Albania or obtain a visa or residence permit may<sup>113</sup> be refused even in other situations not mentioned above, such as, for people who are drug or alcoholic users;<sup>114</sup> or for those who apply or make propaganda for prostitution<sup>115</sup> or are involved in other acts in violation of the legislation; are citizens of a Sstate with whom Albania has serious political conflicts or is in a state of war;<sup>116</sup> have grave physical problems and are unaccompanied by their custodies;<sup>117</sup> or for foreigners who come from epidemic areas etc.<sup>118</sup>

In case a foreigner is refused entry (s)he has the right of administrative or judicial appeal.<sup>119</sup> In principle, the appeal must be submitted outside the territory of Albania except when the foreigner is a citizen with whom the visa free regime is applied and who has a visa, or has requested asylum.<sup>120</sup> Foreigners who have been refused entry are immediately sent back by the travel company or allowed to stay at the BCP in case of asylum.<sup>121</sup> Exceptions are made only on humanitarian grounds.<sup>122</sup>

<sup>105</sup> See Part II, paras. 1(4)(1), 1(4)(5) and 1(4)(6) of the Common Manual.

<sup>106</sup> See Arts. 41 and 42 of the EU Treaty on Fundamental Rights.

<sup>107</sup> See Part II of the Common Manual and Arts. 6-8 of the Schengen Convention.

<sup>108</sup> See Art. 9 of LoF, DCM No. 439/2000.

<sup>109</sup> See Art. 9(3) of LoF.

<sup>110</sup> Ibid.

<sup>111</sup> See Art. 9(2) of LoF.

<sup>112</sup> See Art. 4 of LoF.

<sup>113</sup> See Art 5 of LoF. Art. 3 of October 2003 Draft Law on Amendments of LoF (MoPO) changed the word 'may' used in Article 5 of the LoF with the word 'must' so as to make it mandatory.

<sup>114</sup> See Art. 5(2) of LoF. The draft amendments of the LoF partially remove Art. 5(2) this provision that refuses entry to alcohol users.

<sup>115</sup> See Art. 5(3) of LoF. The MoPO Draft amendments provide for the removal of this provision.

<sup>116</sup> The refusal of the entry for this category of the foreigners is determined by a special order of the Minister of Public Order (see Art. 5 para. 3).

<sup>117</sup> See Art. 5(11) of LoF. MoPO draft amendment provides for removal of this provision.

<sup>118</sup> See for more details Art. 5 of LoF.

<sup>119</sup> See Art. 56/ 57 of LoF.

<sup>120</sup> See Art. 57 of LoF. See also Art. 4(24) of Law No. 8772/2001.

<sup>121</sup> See Art. 21 of DCM No. 439/2000. In case of asylum seekers Border Police notifies the Office for Foreigners and UNHCR. For more details on the procedures followed by the Border Police with asylum cases see Art. 4(24) of Law No. 8772/2001. See also Law No. 8432/1998 'On Asylum'.

<sup>122</sup> Ibid. The officials of the border police in Durres stated that in practice foreigners have been refused entry on the grounds of the lack of a visa or the lack of a passport, especially for EU citizens who use an ID card instead of a passport.

## **Responsible Institutions**

- The border Police, MoPO is the relevant organ, which performs the control of foreigners on entry and exit at border crossing points and carries out the decision of the Chief of the BCP for the refusal of entry.<sup>123</sup>
- The Minister of Public Order issues the order for refusal of entry to some categories of the foreigners.<sup>124</sup>
- Every 6 months MoFA sends the MoPO a list of those the foreign citizens who are refused entry, visa or stay permission or are declared persona non grata.<sup>125</sup>
- The Ministry of Health provides the information about States/areas affected by an epidemic.<sup>126</sup>

## **Gap Analysis**

### **(a) Gap Analysis within the Albanian legislation and the implementation in practice**

#### **Grounds for refusal of entry**

Article 5 LoF contains certain grounds for refusal which the Border Police have not been able to apply in practice due to difficulties in assessing whether foreigners fall under certain categories listed in Article 5 LoF.<sup>127</sup>

#### **Refusal of entry on the grounds of health**

Point 2 (second part) of Article 5 LoF permits refusal in cases of persons who have a “very infectious disease.” The wording of this ground is unacceptably broad and unclear leaving the way open to arbitrary decisions.

#### **Appeal against refusal of entry**

Article 57 LoF mentions the possibility of judicial and administrative appeal against refusal of entry but does not include either sufficient information on the procedure, on the competent authorities, and on the timeframes for such appeals, or appropriate references to the acts and articles containing those provisions. Such lack of clear and complete information constitutes an obstacle to the exercise of the right of appeal.

#### **Information exchange**

According to Article 18 of DCM No. 439/2000 the MoFA sends the MoPO a list of those foreign citizens who are refused entry, visa or a residence permit. Although this procedure is appropriate regarding visas, since for the majority of visas the MoFA is indeed the issuing authority,<sup>128</sup> it is void of any sense regarding entry and residence permits, since the responsible authority to grant and refuse entry<sup>129</sup> and residence permits<sup>130</sup> is the MoPO itself. MoPO is also the responsible authority for the issuing of visas at the Border.<sup>131</sup>

### **(b) Gap Analysis between the Albanian legislation and the EU Acquis**

#### **Place and time for the legal crossing of borders**

The LoF lays down that entry into the territory of Albania must obligatorily take place through the Border and Control Points but it does not mention exit. It also defines the place but not the time for legal crossing, since it fails to specify that crossing has to take place during fixed opening hours, as mentioned in Article 3 of the Schengen Convention.

#### **Grounds for refusal**

- Points 1, 2 (first part), 3 and 11 of Article 5 LoF<sup>132</sup> are not in line with the *acquis*, since they cannot be considered indicators of threats to public security, health or external relations as those terms are interpreted by the *acquis* and by Member State legislation and practice.<sup>133</sup> Furthermore, they do not

<sup>123</sup> In case of refusal, the word ‘Rejected’ is stamped in the foreigner’s travel document document of the foreigner. The police officer compiles the document of refusal, a copy of which is given to the foreigner. For more details on the duties of the Border Police see Art. 4 of Law No. 8772/2001.

<sup>124</sup> See Art. 5 (7) and Art. 5 para.2 of LoF.

<sup>125</sup> Art. 18 of DCM No. 439/2000.

<sup>126</sup> Ibid.

<sup>127</sup> Information obtained from meeting with the Border Police (with the Chief of the Border Police and Chief Controller) in Durrës, 19 August 2003.

<sup>128</sup> Supra, no. 78– 80.

<sup>129</sup> Art. 71, para. 2 LoF, Art. 2, 4, 5, 8 and Art. 21, para. 4 of DCM No. 439/2000, Art. 14 to 16 of Instruction 1460/2001 and Art. 4(5), (21) of Law No. 8772/001.

<sup>130</sup> Art. 19 and 71, para. 1 LoF, Art. 10 DCM No. 439/2000 and Art. 13 of Instruction 1460/2001.

<sup>131</sup> Art. 71, para. 2 LoF, Art. 4 and 6 DCM No. 439/2000, Art. 10 and 18 of Instruction 1460/2001, and Art. 4(16) of Law No. 8772/2001.

<sup>132</sup> Article 5 LoF: “The request of entrance, visa and stay permission can be refused to the foreigners in cases when they: 1. Are users of narcotics; 2. Are chronic users of alcohol; 3. Applicate or make propaganda for prostitution or other acts which go against the public moral and are punishable by law; 4. Have grave psychological problems and are unaccompanied by their custodies.”

refer to any concrete behaviour or characteristic of the individual that can be objectively, and with the minimum level of certainty, identified by the competent authority at the moment of the application and of its assessment. As a consequence, the assessment of an application according to those grounds is not justifiable from the *acquis* point of view, and is practically impossible, opening the way to arbitrary decisions.

- Point 4 of Article 5 LoF<sup>134</sup> is also incompatible with the *acquis*. It includes any violation of the Albanian legislation irrespective of its gravity or the penalty foreseen, whereas the *acquis* only admits as valid cases of refusal on grounds of security, cases of serious offences and convictions for offences carrying a custodial sentence of at least one-year.
- The LoF does not explicitly include under cases of refusal other cases mentioned by the *acquis* such as lack of: the necessary travel documents, the visa if required, documentation justifying the purpose of the stay, and sufficient means of subsistence for the stay and return.

## **Recommendations**

### **Place and time for the legal crossing of borders**

Article 8 of the LoF should be revised to include both entrance into and exit from the territory. The time for the legal crossing should also be defined by adding the phrase “during fixed opening hours.”

### **Grounds for refusal**

- Points 1, 2 (first part), 3 and 11 of Article 5 LoF should be repealed.<sup>135</sup>
- Point 2 (second part) of Article 5 LoF should be amended to define clearly the diseases that may lead to a refusal. The *acquis* provisions, which limit such diseases to “the quarantinable diseases referred to by the World Health Organisation’s International Health Regulation No 2 of 25 March 1951 and to such other infectious or contagious parasite-based diseases as are the subject of protective provisions in relation to nationals in the host country” could be used for reference.<sup>136</sup>
- Point 4 of Article 5 LoF needs to be amended so as to limit refusal to cases of serious offences and convictions for offences carrying a custodial sentence of at least one-year.
- A general point permitting refusal for reasons of public policy and national security could also be added under Article 5 LoF so as to permit refusal in cases that cannot fall under any specific point of the article yet still constitute cases of threat to public policy and national security.
- The rest of the grounds for refusal of entry laid down in the *acquis* should be added to Article 5 LoF, namely lack of: the necessary travel documents, a visa (if required), documentation justifying the purpose of the stay, and sufficient means of subsistence for the stay and return.
- For the sake of clarity and coherence and due to the differences between grounds for refusal of entry, visas and residence permits, each of these cases should be treated in a separate article under the relevant chapters of the LoF. Article 5 should only contain the grounds for refusal of entry while two separate articles should be added in the sections for visas and residence permits containing all the grounds for the refusal of those two.<sup>137</sup>

### **Clear procedure for appeal against refusal of entry**

Article 57 LoF should be revised so as to lay down the necessary information for the exercise of the right of appeal.

### **Training for the Border Police on the practical implementation of the provisions on entry**

The training of the Border Police staff at the BCP should focus on the creation of knowledge and capacity to conduct operational risk assessment, i.e. in the process of the border control to detect foreigners who constitute a threat to national security, public order and public health, as well as illegal migrants or trafficked people.

### **Information exchange**

The inconsistency in Article 18 of DCM No. 439/2000 regarding the procedure of information exchange between MoFA and MoPO for persons refused entry or residence permits should be removed.

### **Creation of a practical handbook for Border Police**

<sup>133</sup> Supra, note 103 and 104, see also for reference Council Directive No. 64/221/EEC of 25 February 1964 on the co-ordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health.

<sup>134</sup> Article 5 LoF: “(...) 4. Have violated or violate provisions of the Albanian legislation.”

<sup>135</sup> According to the October 2002 Draft of MoPO, amendments to the LoF points 2 and 3 of Art. 5 LoF are abrogated. Supra nos. 114, 115, 117.

<sup>136</sup> See for reference Council Directive No. 64/221/EEC of 25 February 1964 on the co-ordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health and also Art. 20 of the 2001 Proposal for a Council Directive concerning the status of third-country nationals who are long-term residents.

<sup>137</sup> See also above, Section 1.2 of the Report and later, Section 3.1.

The training could be supplemented by the creation of a practical handbook for Border Police that would be available for consultation at all times, based on the Common Manual and the Schengen Catalogue of Best Practices adopted by the Council on 28 February 2002.

## 2. Admission

One of the most important areas of migration management is the policy and practice concerning the admission of foreigners. Admission for tourism or a visit is regulated by the general conditions for entry. This section will focus on the three admissions motives to which specific legal provisions and practices apply: admission for employment, self-employment and study purposes. All of these cases are connected with a relatively long sojourn in the territory of the host country and can affect different spheres of the host States public policy such as the labour market, the social security system, education, etc. Before going on to examine the most essential aspects of the *acquis* on admission for each one of these three specific reasons mentioned above, reference should be made to certain horizontal principles valid in all three cases:<sup>138</sup>

- Transparency and rationality: it requires laying down clearly the conditions under which third country nationals may enter and stay in the EU as employed or self-employed workers or students, setting out their rights and obligations and ensuring that they have access to this information and that there are mechanisms in place to see that it is applied fairly.<sup>139</sup> It furthermore requires that application and assessment procedures should be as clear and as simple as possible.
- Differentiating rights according to the length of stay: the principle that the length of residence has an influence on the rights of the person concerned has a long tradition in EU Member States. Migrants should be granted a core of rights on their arrival, in order to integrate successfully into society, and that core of rights should be gradually extended with the length of stay. In the case of workers, temporary workersones who intend to return to their country of origin should be offered a secure legal status while at the same time those who wish to stay and who meet certain criteria should be provided with a pathway leading eventually to a permanent status. The case of students could be considered separately with special arrangements for third country nationals who have studied in the EU for several years in the EU, to provide for easier access to the EU labour market.<sup>140</sup>
- Member States may always restrict or terminate the entry and residence of third-country nationals or terminate it for considerations of public security, policy and health.<sup>141</sup>

### 2.1. Admission for employment

#### EU *acquis*

As mentioned in the general considerations of the 1994 Council Resolution on the limitation of admission of third-country nationals to the territory of the Member States for employment, EU policy concerning labour migrants is restrictive.<sup>142</sup> As a consequence, the following main principles govern EU policy and practice in that field:

- No third-country national can be admitted into the EU for employment without prior authorisation in the form of a work permit, not even for a period of less than 3 months.<sup>143</sup>
- Respect for and protection of the domestic labour market situation should always be ensured: a post can only be filled with a third-country worker after a thorough assessment of the domestic labour market situation and if the job vacancy cannot be filled by an EU national or third-country national already enjoying access to the national labour market (permanent resident, family member, etc.). This principle may not be implemented if international obligations and commitments of the EU and its Member States already provide otherwise.<sup>144</sup>
- The *acquis*, though restrictive, aims at the same time to ensure that the specific situation of certain groups of persons is properly taken into account. It, therefore, draws a clear distinction between four

<sup>138</sup> See Communication 757/2000 on a Community Immigration Policy (hereinafter COM 757/2000), Chapter 3(4)(2).

<sup>139</sup> See future *acquis*, para. 6 of preamble and Chapter V of the 2001 Proposal for a Council Directive on the conditions of entry and residence of third country nationals for the purpose of paid employment and self-employed activities (hereinafter 2001 Directive Proposal/Employment), para. 10 of the preamble and Chapter V of the 2002 Proposal for a Council Directive on the conditions of entry and residence of third country nationals for the purposes of studies, vocational training or voluntary service (hereinafter 2002 Directive Proposal/Study).

<sup>140</sup> See future *acquis*, Arts. 7, 8 and 11 of the 2001 Directive Proposal/Employment and Chapter IV of the 2002 Directive Proposal/Study.

<sup>141</sup> See Section A, para. 11 and C, para. 10 of Council Resolution of 30 November 1994 relating to the limitations on the admission of third-country nationals to the territory of the Member States for the purpose of pursuing activities as self-employed persons (hereinafter 1994 Resolution/Self-employment) and future *acquis*, Arts. 10, 23 and 27 of the 2001 Directive Proposal/Employment. See also Section A, para. 9 of Council Resolution of 30 November 1994 on the admission of third-country nationals to the territory of the Member States for study purposes (hereinafter 1994 Resolution/Study) and future *acquis*, Arts. 5 and 15 of the 2002 Proposal Directive/Study.

<sup>142</sup> See Section A of Council Resolution of 20 June 1994 on limitation of admission of third-country nationals to the territory of the Member States for employment (hereinafter 1994 Resolution/ Employment).

<sup>143</sup> See Section C, para. (ii) of 1994 Resolution/Employment and future *acquis*, Art. 4 of the 2001 Directive Proposal/Employment.

<sup>144</sup> See Section C, para. (i) of 1994 Resolution/Employment and future *acquis*, Art. 6 of the 2001 Directive Proposal/Employment.



specific categories of workers, namely trainees, frontier workers, seasonal workers and intra-corporate transferees, and the rest of the labour migrants and lays down different provisions and derogations for each category.<sup>145</sup>

### ***Albanian Legislative and Institutional Framework***

The Albanian Constitution provides that everybody has the right to earn a wage by lawful work,<sup>146</sup> a right that is extended both to nationals and to foreigners. This right, for foreigners who want to work in Albania for a period of more than 3 months, is subject to a prior request for a work permit.<sup>147</sup> A work permit (WP) is defined as the authorisation issued by the competent authority to the foreigners for business purposes, employment, or self-employment.<sup>148</sup> Permanent residents<sup>149</sup> are exempted from the obligation to obtain a WP and so are some other categories of foreigners as outlined below:<sup>150</sup>

- Diplomatic staff and other employees in diplomatic missions.
- Foreigners working for NGOs.
- Executive directors and other important staff of foreign companies.
- Intra corporate transferees.
- Specialists brought to Albania under bilateral agreements.
- The crew of the inter border transport of goods and peoples.
- Academic lecturers.
- Electronic and written media representatives.
- University students based on bilateral agreements.

The Albanian legislation mentions several types of WP, which depend on the activity of the applicant and timeframe of the WP.<sup>151</sup> As a rule, the first WP issued to a foreigner shall be of one-year duration and limited in one local unit subject to renewal.<sup>152</sup>

The Law on Foreigners lays down the principle that the issuance of a WP to foreigners is dependent on the on the Labour market needs.<sup>153</sup> The Albanian legislation mentions that Labour market needs shall not be taken into consideration in respect of the foreign spouse of an Albanian national and for foreigners who have finished a professional high school in Albania.<sup>154</sup> However, even though envisaged by Law, in practice the Labour market needs are not evaluated or taken into consideration.<sup>155</sup>

The application to obtain a WP is lodged at the Consular and Diplomatic Missions if the applicant is abroad, and in the General Directorate of Migration or in the regional employment units if the applicant is already in the territory of Albania.<sup>156</sup> An application may be lodged either by the employer or employee, but the worker is supposed to receive the work permit personally.<sup>157</sup> The timeframe for issuing or refusing the WP is 30 days if the application is done in Albania, and 60 days if the application is done abroad.<sup>158</sup>

The Albanian legislation states that in case the application for a WP is refused, the foreigner has the right to be notified in written form and to make a complaint at the Minister of Labour and Social Affairs within five days of the notification of refusal. The Minister of Labour and Social Affairs must take a decision on the complaint within 2 weeks from the date it was lodged.<sup>159</sup>

<sup>145</sup> See Section C, paras. (i), (iv), (v) and Annex of 1994 Resolution/Employment. See also future acquis, Arts. 2 and 12 - 16 of the 2001 Directive Proposal/Employment.

<sup>146</sup> Art. 49 of CoA.

<sup>147</sup> Art. 25 of LoF.

<sup>148</sup> Art. 2 of LoF.

<sup>149</sup> Art. 63 of LoF.

<sup>150</sup> See Art. 41 of LoF. In addition, Art. 42 of LoF mentions that also for some particular jobs, foreigners can work without a work permit for a period of less than 6 months.

<sup>151</sup> See Art. 37 of LoF; DCM No. 262/2000 "On issuing work permit to Foreigners" (DCM No. 262/2000); Instruction of the Minister of MoLSA No. 786/2001 "On issuing work permit to Foreigners" (Instruction 786/2001). In addition to the 8 types of work permits envisaged by the LoF and by-laws, Art. 12(2) of the Law on Asylum provides for the right of Asylum seekers to obtain a special work permit. See also Arts. 10-13 of the Law "On Integration and Family Reunification of persons granted asylum in Albania" for the procedures to obtain the work permit for persons granted asylum.

<sup>152</sup> See Arts. 31 and 39 of LoF.

<sup>153</sup> Art. 32 of LoF.

<sup>154</sup> Art. 33 of LoF.

<sup>155</sup> This was explained in the meeting with the representatives of the Employment office in Durres, to be due to the fact that the foreigners are considered as a potential source of generation of employment in Albania.

<sup>156</sup> See Art. 26 of LoF.

<sup>157</sup> Art. 29 of LoF.

<sup>158</sup> Art. 30 of LoF.

<sup>159</sup> Art. 44 of LoF.

## **Responsible Institutions**

- The Local Employment Office<sup>160</sup> is the responsible institution for the issuance of the WP if the activity of the applicant is only in one local administrative unit.
- General Migration Directorate<sup>161</sup>, MoLSA is responsible for the issuance of the WP if the activity of the applicant is extended in more than one local administrative unit.
- MoLSA is responsible for elaborating the employment policy of foreigners and to co-ordinate the activity of the structures of employment for foreigners;<sup>162</sup> to prepare the drafts of bylaws related to employment of the foreigners;<sup>163</sup> to define the model of a WP; the procedures for granting, renewal and refusal of the WP; and to adjudicate the appeals against the refusals of the work permit.<sup>164</sup>
- The Labour State Inspectorate (LSI) is the competent organ to check and take sanctions against the violations of the legislation that regulates the employment of the foreigners.<sup>165</sup>

## **Gap Analysis**

### **(a) Gap Analysis within the Albanian Legislation and the Implementation in Practice**

#### **Lack of clear definition**

The Albanian legislation on the WP does not provide a definition of the “uninterrupted period of living”, which is one of the conditions for the issuance of an unlimited 5-year WP type “C”.<sup>166</sup>

#### **Obstacles to access of information**

Information about the job vacancies and the procedure related to the issuance and renewal of a WP can be obtained in the EO, as well as through information boards and leaflets, but only in Albanian. The language barrier can be considered as one of the serious obstacles for the access to information.

#### **Structure of legislation on admission for employment<sup>167</sup>**

### **(b) Gap Analysis between the Albanian legislation and the EU Acquis**

#### **Prior authorisation for the employment of foreigners**

Article 25 LoF lays down that a WP is needed only in cases in which the foreigner wants to work in Albania for more than 3 months. This is contradictory to the *acquis*, which clearly states that third-country nationals can be engaged in remunerated economic activity (employed, self-employed) only upon prior authorisation, independently of the duration of the activity.

#### **Work permits for legal persons**

Article 25 LoF provides that a WP may be issued both to natural and legal persons.<sup>168</sup> This is contradictory to the *acquis* on admission for employment, which only applies to natural persons. The regime for legal entities in the EU does not form part of the immigration policy but is regulated by specific provisions on the freedom of establishment.<sup>169</sup>

#### **Respect and protection of the domestic labour market**

The Albanian legislation in this field is not governed by the basic principle that a foreigner should be admitted for employment only when the job vacancy cannot be filled by an Albanian national or a third-country national already enjoying access to the national Labour market (permanent resident, family member, etc.). The simple reference to the “needs of the market”<sup>170</sup> and the provision of reporting vacancies to the employment office (EO)<sup>171</sup> is not sufficient to protect the domestic work force.

<sup>160</sup> See Art. 26 of LoF; Local Employment offices are under the National Employment Service, MoLSA, but it has to work closely and is assessed by the Migration Department in a large part of its activity.

<sup>161</sup> Art. 26 of LoF.

<sup>162</sup> See Art. 1 of DCM No. 262/2000.

<sup>163</sup> Art. 83 of LoF.

<sup>164</sup> At the time this report was written, MoLSA had finished preparing the draft amendments of the respective part of the LoF, which is the main legal act that regulates the employment of the foreigners in Albania. IOM has given its expertise and advice to MoLSA for this issue.

<sup>165</sup> Art. 45 of the LoF.

<sup>166</sup> Art. 37 LoF.

<sup>167</sup> See Section 2.1 (b) Gap Analysis between the Albanian legislation and the EU Acquis, Gaps related to the principle of clear and transparent procedure.

<sup>168</sup> According to the July 2003 version of the MoLSA draft on amendments to the LoF, the inclusion of legal persons has been removed.

<sup>169</sup> See Arts. 43-48 of the Treaty establishing the European Community.

<sup>170</sup> See Art. 32 LoF.

<sup>171</sup> See Art. 21 Law 7995/95 for the Encouragement of Employment.

### **Distinction between the different categories of workers**

The current LoF does not distinguish between the different categories of workers, such as frontier, seasonal, intra-corporate transferees, and trainees.<sup>172</sup>

### **Gaps related to the principle of clear and transparent procedure**

- The current LoF lacks specific provisions concerning the revocation of WPs, with the exception of the general clause of Art. 7 LoF.<sup>173</sup> At the same time Article 7 of Decision 262/2000 on the issuance of work permits for foreign citizens mentions that “changes in the substantial conditions of the approval” of WPs shall make the latter void but neither lists them nor defines the term “substantial.” The lack of such a list poses the risk of arbitrary decisions for the revocation of WPs.
- The grounds for refusal of WPs are not exhaustively enumerated in any Act. Contrary to the principles of clear and simple procedures, rationality and access to information, these grounds are divided between the LoF and Decision 262/2000 with no references to the other included in either of them.
- The required documentation which should accompany applications for WPs is mentioned in Decision 262/2000, yet no reference to that secondary piece of legislation exists in the relevant Chapter of the LoF. Provisions for appeal against refusals and revocations of WPs are scattered between Articles 44 and 56 of the LoF and Article 8 of Decision 262/2000 with no relevant references in the body of the articles and no clarification of the relation between them.

### **Recommendations**

#### **Abolishing the legal possibility in the LoF for work without authorisation for a period of 3 months**

Art. 25 LoF should be amended and the existing legal possibility for the foreigners to work for 3 months without a WP should be abolished.

#### **WP only for natural persons**

Reference to legal persons should be removed.<sup>174</sup>

#### **Legal provisions and procedure for Labour market test as a precondition for the issuance of WPs**

Clear procedures for the performing of labour-market tests should be included in the LoF or in a bylaw in order to guarantee full compliance of the Albanian legislation with the *acquis*. Based on EU experience of the EURES<sup>175</sup> system, the following procedure could be suggested: the job vacancy should be announced in the local EO and on a specially created website of the National Employment Service for at least one month before the issuance of the WP.<sup>176</sup>

#### **Distinction in the LoF between the different categories of foreign workers**

The LoF and the by-laws for its implementation should differentiate between the specific groups of foreign workers: frontier, seasonal, intra-corporate transferees, and trainees. Clear and precise definitions of the different categories should be adopted in the LoF.<sup>177</sup>

#### **Adoption of clear, coherent and simple provisions concerning required documentation, revocation and refusal of work permits and the relevant appeal**

The required documentation as well as the grounds of refusal and revocation of WPs should be exhaustively and clearly defined in the LoF and appropriate references to relevant secondary legislation, if and where it exists, should be inserted. The right of defence should be guaranteed by adopting simple, clear and complete provisions on its exercise.<sup>178</sup>

#### **Definition of “uninterrupted period of living”**

A definition of “uninterrupted period of living” should be adopted in order to avoid possible contradictory practice in the different Employment offices.

<sup>172</sup> The July 2003 version of the MoLSA draft on amendments to the LoF distinguishes between those categories and includes definitions and specific provisions for each one of them.

<sup>173</sup> Art. 7 LoF mentions that any decision or permission regarding foreigners may be annulled when the reasons on which it was based cease to exist, or the conditions which made it possible change, or because of the presence of new factors that do not allow the entry or stay of the foreigner in Albania.

<sup>174</sup> *Supra*, no. 168.

<sup>175</sup> European Employment Services (EURES) is a cooperation network designed to facilitate the free movement of workers within the European Economic Area; Switzerland is also involved. Partners in the network include public employment services, trade union and employers' organisations. The European Commission coordinates the network.

<sup>176</sup> The team considers this solution entirely feasible for Albania.

<sup>177</sup> *Supra*, no. 172.

<sup>178</sup> The July 2003 version of the MoLSA draft on amendments to the LoF contains provisions on the revocation of WPs and the right to appeal but they are still insufficient compared to EU *acquis* requirements.

### **Translation of information about the admission for employment in other languages**

Information in the employment offices and in the future website of MoLSA about admission for employment in Albania should be translated in one or more foreign languages in order to facilitate access by foreign citizens. The choice of these languages could be made on the basis of statistics of the main countries of origin of foreign workers.

### **Establishment of a sector/office for migration in the National Employment Service**

The possibility of the establishment of a sector/office for migration in the National Employment Service should be considered. The new structure could deal with the issuance and renewal of WPs for activities in more than one region. This way the Directorate for Migration in MoLSA could focus more on strategic migration management, emigration, etc., while the specialised National Employment Service and its employment offices would be engaged in with practical implementation.

## **2.2. Admission for Self-Employment**

### **EU *acquis***

The EU *acquis*<sup>179</sup> calls for a distinction in the treatment of the persons applying for admission for the purpose of pursuing salaried activity (employment) and those intending to start independent economic activity (self-employment). Although the approach in this case is also restrictive<sup>180</sup> and certain principles, such as the need for a prior authorization even for short-term self-employment,<sup>181</sup> the need for transparency and clarity are common, and the following specifics should be highlighted:

- The decisive principle of the respect to Labour market (economic needs test) is replaced by the principle of the economic benefit for the host country and/or its regions (beneficial effects test). Third-country nationals should be admitted to a Member State for the purposes of pursuing independent economic activities only when it can be demonstrated that the envisaged activities will add value and will have beneficial effects on the employment and/or economic development of the country.<sup>182</sup>
- Particular emphasis is given to the need that applicants demonstrate that they have sufficient financial means, including their own resources, in accordance with the business plan, so as to ensure that they do not end up in a paid-employment relationship.<sup>183</sup>

### ***Albanian Legislative and Institutional Framework***

Admission for self-employment is regulated by the same norms and principles as the ones that regulate the admission for employment. Thus the procedures, timeframes and state institutions and the documentation for provision of the work permit<sup>184</sup> do not differ. The responsible institutions<sup>185</sup> have not, to date, produced any study on market needs, and have not provided information about the appropriateness of the admission of the foreigners for employment in Albania. As a consequence, neither the Labour market needs nor any beneficial effect test are taken into consideration in practice by the competent organs when they issue the work permits for self-employment.<sup>186</sup>

### **Gap Analysis**

#### **(a) Gap Analysis within the Albanian Legislation and the Implementation in Practice**

Structure of legislation on admission for self-employment<sup>187</sup>

#### **(b) Gap Analysis between the Albanian Legislation and the EU *Acquis***

### **Prior authorisation for self-employment**

The Albanian legislation lays down that a WP is needed only in cases in which the foreigner wants to work

<sup>179</sup> See Section A, para. 4 of the 1994 Resolution/Self-employment. See also future *acquis*, Chapters I and III of the 2001 Directive Proposal/Employment.

<sup>180</sup> See Section A, para.1 of the 1994 Resolution/Self-employment.

<sup>181</sup> See Section C, para. 3 and 4 of the 1994 Resolution and future *acquis*, Art. 17 of the 2001 Directive Proposal.

<sup>182</sup> See Section A, para. 5 and Section C, para. 2 of 1994 Resolution/Self-employment and future *acquis*, para. 8 of preamble and Art. 19 of the 2001 Directive Proposal/Employment.

<sup>183</sup> See Section A, para. 7 and Section C, paras. 2, 3, 5 and 8 of the 1994 Resolution/Self-employment and future *acquis*, Art. 18 of the 2001 the Directive Proposal/Employment.

<sup>184</sup> Work permit for self-employment is called type D if it is for one year and type E if it is for more than 3 years. See Art. 37 of LoF, and Art. 262 of DCM No. 262/2000 and paras. 12 and 13 of Instruction 786/2001.

<sup>185</sup> Art. 3 of Instruction 262/2000 provide that General Directorate of Migration, MoLSA is responsible for determining the market needs.

<sup>186</sup> The writers of this report have been informed in the Durres employment office that there is a need for a more expertise and legislative framework when issuing the work permits for self employment as some of the foreigners have opened unsuccessful activities, thus being in debt even with the Albanian employees.

<sup>187</sup> See Section 2(2)(b) 'Gap Analysis between the Albanian legislation and the EU *Acquis*', Gaps related to the principle of clear and transparent procedure.

in Albania for more than 3 months in Albania. This is incompatible with the *acquis* on self-employment, which specifically requires prior authorisation in any case.

### **Work permits for legal persons**

Article 25 LoF provides that a WP may be issued both to natural and legal persons.<sup>188</sup> This is not in line with the explicit provision of the *acquis* on self-employment, which states that it only concerns only individuals and does not affect the setting up of firms.

### **Distinction in the treatment**

The Albanian legislation does not distinguish in the treatment of foreigners entering Albania for employment and those entering for self-employment. The types of WP are different but requirements, authorities and procedures coincide.

### **Beneficial effects test**

The Albanian legislation in this field is not governed by the principle that a foreigner will be admitted to self-employment only after a beneficial effects test has taken place, proving that the economic activity adds value to the Albanian economy, (job opportunities, investment, transfer of technologies, etc.).

### **Gaps related to the principle of clear and transparent procedure**

The gaps relating to the lack of clarity and transparency of provisions on required documentation, refusal and revocation of WPs mentioned previously, in the employment section,<sup>189</sup> also apply in this case.

### **Sufficient funds**

The Albanian legislation does not include among the requirements for a self-employment WP evidence of funds available for the intended purpose.

### **Recommendations**

#### **Clear distinction between employed and self-employed foreigners in the legislation**

A clear distinction between admission for employment and self-employment should be made in the LoF and the by-laws for its implementation. The Albanian legislation should explicitly state the criteria for granting a WP for self-employment and the relevant documentation required.<sup>190</sup>

#### **Mechanism for economy benefit test**

Before admission for the purpose of self-employment, it should be duly established that such admission would add value to the economy of Albania as a host country. For that end the EO processing the application may require the opinion of the local Chamber of Commerce and Industry.

#### **Sufficient funds**

The requirement that applicants should provide evidence of having sufficient funds for the intended purpose should be added to the existing ones. This will help ensure that foreigners admitted as self-employed do not end up in a paid-employment relationship, thus circumventing legislation on admission for employment.

Adoption of clear, coherent and simple provisions concerning required documentation, revocation and refusal of work permits and the relevant appeal

The relevant recommendation included in the employment section also applies in this case.<sup>191</sup>

## **2.3. Admission for study purpose**

### **EU *acquis***

The specific feature of migration for study purposes or vocational training is that it is by definition temporary and does not depend on the Labour market situation of the host country. It is considered a form of mutual enrichment for the migrants who benefit directly from it, for their country of origin and for the host country, while helping to improve mutual familiarity between cultures. The admission of third country

<sup>188</sup> According to the July 2003 version of the MoLSA draft on amendments to the LoF, the inclusion of legal persons has been removed.

<sup>189</sup> See Section 2(1)(b) Gap Analysis between the Albanian legislation and the EU *Acquis*, Gaps related to the principle of clear and transparent procedure.

<sup>190</sup> The July 2003 version of the MoLSA draft on amendments to the LoF, does not envisage any specific provisions or requirements, except from the introduction of definitions of "activity as an employee-worker", "self-employed person", "WP as an employee-worker" and "WP as self-employed."

<sup>191</sup> See Section 2.1, Recommendations, Adoption of clear, coherent and simple provisions concerning required documentation, revocation and refusal of work permits and the relevant appeal.

nationals for study or training purposes has therefore traditionally been looked on favourably, particularly as regards students in higher education.<sup>192</sup> The current EU acquis<sup>193</sup> provides for the following main conditions and restrictions in the case of admission for study purposes:

- Third-country nationals requesting admission as students in the EU have to prove that they fulfil the entry and stay requirements of the Member State concerned, that they have been admitted to State or State-recognised private educational institutions and that they have the financial means to support themselves.<sup>194</sup>
- As a general rule, admission for study purposes should not turn into permanent migration, and students must in principle return to their countries of origin at the end of their studies. Following that consideration, the authorisation for residence granted for study purposes is limited to the duration of the studies, and expires as soon as those are over or abandoned.<sup>195</sup>
- Studying should be the main activity of the admitted person. That means that (s)he may not engage in gainful employment, either as employed or self-employed. As an exception, the foreign student may perform a short-term or subsidiary job, which does not affect the continuation and the duration of the study.<sup>196</sup>
- Although the scope of the current acquis is limited to students,<sup>197</sup> the existing 2002 Directive Proposal in this field also includes provisions on vocational training and voluntary service.<sup>198</sup>

### ***Albanian Legislative and Institutional Framework***

The right of everyone to education is expressly recognised by the Albanian Constitution.<sup>199</sup> Furthermore, the Albanian Legislation<sup>200</sup> states that education in the Republic of Albania is a national priority. Education is divided into three levels; elementary, high, and higher education. Mandatory education and general high education in public schools are free of charge,<sup>201</sup> whereas education in private institutions is subject to the conditions stipulated by the respective institutions.<sup>202</sup>

In compliance with the right to education contemplated by the Constitution, the Law on Pre-University education envisages the right of persons of Albanian nationality living abroad and foreigners to be educated in public and private elementary and general high schools.<sup>203</sup> Furthermore, foreigners, stateless persons and nationals who have studied in foreign academic institutions may continue their studies in Albanian elementary and high schools upon the provision of a certificate from the country where they have studied.<sup>204</sup>

The Albanian Legislation also provides for the right of Foreigners to study at Albanian Universities. However, the education of foreign students in Albanian Universities is conditional upon the quotas decided by the Council of Ministers.<sup>205</sup> Foreign students are divided in two categories; those admitted on the basis of International Bilateral Agreements; and those who have applied independently.<sup>206</sup> All the foreign students have to prove they are fluent in the Albanian Language; a compulsory language test is organised by the University of Tirana to assess their knowledge of Albanian.<sup>207</sup>

The admission of foreigners for the purposes of study is subject to the possession of a 'study visa', which by definition is issued to those foreigners who want to follow different courses or who want to attend different

<sup>192</sup> See Section A, para. 2 of 1994 Resolution/Study and future acquis, para. 1(2) of the Explanatory Memorandum and para. 4 of the preamble of the 2002 Directive Proposal/Study.

<sup>193</sup> See the 1994 Resolution/Study.

<sup>194</sup> See Section C, para. 2 of 1994 Resolution/Study, and future acquis, Chapter II of the 2002 Directive Proposal/Study.

<sup>195</sup> See Section A, paras. 3 and 4 and Section C, paras. 2 and 3 of 1994 Resolution/Study, and future acquis, Arts. 11-15 of the 2002 Directive Proposal/Study.

<sup>196</sup> See Section C, para. 4 of 1994 Resolution/Study, and future acquis, para. 8 of the preamble and Art.18 of the 2002 Directive Proposal/Study.

<sup>197</sup> See Section C, para. 1 of 1994 Resolution/Study.

<sup>198</sup> See future acquis, Arts. 1, 2, 5 to 15 and 18 of the 2002 Directive Proposal/Study.

<sup>199</sup> See Art. 57 of CoA.

<sup>200</sup> See Art. 1 of the Law on Pre-University Education No.7952 date 21.6.1995 (Law No. 7952/1995).

<sup>201</sup> See Art. 57 of CoA. Mandatory education in Albania is 8 years. Public schools in Albania are laic. However as provided by Art. 7 of Law No. 7952/1995, religious private schools are also allowed. See DCM No. 248/1999 "On the criteria and procedures for the licensing and functioning of the educational private institutions and private secondary institutions that teach religious subjects or in a foreign language."

<sup>202</sup> Art. 57 of CoA and Arts. 43-50 of Law No. 7952/1995 establish the right of everyone to be educated in private schools. See also DCM No.156/2001 "On the Private Higher Institutions".

<sup>203</sup> See Arts. 11 and 43 of Law No. 7952/1995.

<sup>204</sup> See Art.6 of Normative Dispositions of MoES (as of September 30, 2003).

<sup>205</sup> For the Academic year 2002-2003, 20 places for foreigners were foreseen.

<sup>206</sup> Students applying independently are obliged to provide: a request; a certificate issued by the Ministry of Education of the country of origin proving the level of education; a certificate of the Albanian Language; identity documents; a residence permit issued by MoPO. All the documents shall be legalised and translated in Albanian. Documentation of students admitted based on bilateral agreements, shall be submitted through the respective embassies. (Information received by representatives of MoES on 17 August 2003). Art. 32 of Law No. 8461/1999 "On Higher Education" mentions that foreigners studying in Albanian Universities have equal rights with nationals in respect of academic issues and also the right of scholarships if they obtain excellent results (highest grades for all subjects).

<sup>207</sup> A course of the Albanian language for foreigners established by DCM No. 162/1995 is run by the University of Tirana.

schools in Albania.<sup>208</sup> The duration of the visa depends on the duration of the studies. The conditions for the approval of the visa are the same as the ones for the other types of the visa.<sup>209</sup>

Once admitted to study in Albania, foreign students may apply for a residence permit, subject to the same conditions and requirements as for other categories of foreigners.<sup>210</sup> However, the Albanian legislation aims to create more facilities to this category of foreigners when it states that a RP is issued with priority to foreign students accepted by public or private institutions.<sup>211</sup> The price of the residence permit for students is determined on a reciprocity basis.<sup>212</sup>

Foreign students are also entitled to a work permit for students.<sup>213</sup> This type of work permit is issued only if the student submits an approval by the faculty in which (s)he studies showing that his/her employment shall not affect the process of his/her education.<sup>214</sup> The work permit enables foreign students to work only reduced working hours during the academic year and on a full time basis during the vacation periods.<sup>215</sup>

### **Responsible Institutions**

- The MoES proposes an annual quota for foreign students; determines the necessary documentation for admission in Albanian educational institutions; receives, examines and decides on the applications of the foreigners; gives permission to higher schools to enrol foreign students; and registers all foreign students.
- MoFA issues visas to the students.
- Local Police Commissariats, MoPO issue RPs for students.
- MoLSA is responsible for issuance of work permits for students.
- The Council of Ministers approves the fees for those foreign students that want to study in Albania with the proposal of the MoES.
- High schools enrol foreign students upon prior authorisation of the MoES.

### **Gap Analysis**

#### **(a) Gap Analysis within the Albanian Legislation and the Implementation in Practice**

Not applicable.

#### **(b) Gap Analysis between the Albanian Legislation and the EU *Acquis***

##### **Definition of requirements**

The current LoF establishes a “study visa” but no specific requirements for the granting of this type of visa. Decision 439/2000, on the other hand, lays down that foreign students accepted in “Albanian educational institutions” are provided with a residence permit with preference as compared to other foreigners. The kind of educational institution considered valid for study purposes is not defined, whereas the *acquis* specifically establishes that it should be either a State or a State-recognised private education institution. Whether or not admission may take place for courses in preparation for a certain university course or an application (e.g. language training) is not clarified either, whereas the *acquis* specifically permits it.

##### **Relevant activities**

Admission for vocational training or voluntary service is not at all regulated in Albanian legislation.

##### **Employment of foreign students**

The LoF mentions that a WVP may be granted to students (type F) “for reduced working hours” without further clarifying those terms. The lack of a clearer definition leaves open the possibility of arbitrary decisions by the EO or of the student WVP being misused as authorisation for ordinary employment.

### **Recommendations**

Comprehensive regulation of the requirements and documentation for admission for study purposes  
The requirements and documentation for a visa, RP and WVP for study purposes should be specifically, clearly

<sup>208</sup> See Art. 18(3) (b) of LoF.

<sup>209</sup> See Art. 17 of LoF.

<sup>210</sup> See Arts. 21 and 22 of the LoF.

<sup>211</sup> See Art. 12 of DCM No. 439/2000.

<sup>212</sup> *Ibid.*

<sup>213</sup> See Art. 37 of LoF, Decision 262/2000 and Instruction of MoLSA 786/2001. The work permit for students is type F.

<sup>214</sup> *Ibid.*

<sup>215</sup> *Ibid.*

and in compliance with the *acquis* defined in the LoF and in the bylaws for its implementation. They should as a minimum include: a clear definition of the educational institutions recognised as valid for foreigners to study at; a definition of what is included in the term “study purposes” (e.g. preliminary language courses, postgraduates studies, etc.), a clear list of requirements and restrictions for the foreigners admitted for study purposes which should be distributed to the EO and police commissariats.

### **Defining the time limit of the employment of students**

The maximum number of employment hours allowed by student WPs during the school year should be defined to facilitate decisions in practice and render them more objective and transparent. The hours foreseen in the Proposal for a Council Directive on the conditions of entry and residence of third country nationals for the purposes of studies, vocational training or voluntary service (between 10 and 20 hours per week) could be used for reference.

### **Relevant activities**

Taking into account that the existing EU proposal in this field includes provisions on vocational training and voluntary service, it would be advisable to adopt provisions regulating admission for those purposes as well.

### **Exchange of information between educational institutions and immigration authorities**

In order to prevent the possibility of irregular migration, educational institutions should be obliged to regularly send the competent immigration authority of the MoPO information about the status of foreign students, especially in cases when the foreigner has temporally or permanently abandoned the course of study.

## **3. Sojourn**

The sojourn *acquis* consists of acts concerning both documentation and procedural issues, that this includes is residence permits and the information they should contain, as well as substantial issues such as the status, rights and obligations of residents, and in particularly long-term ones. Following the necessity to harmonise the format of residence permits and their security features, so as to render them suitable for use by all Member States in the framework of a harmonised immigration policy, a uniform format has been laid down and common standards for its filling in have been adopted. Likewise, following the acknowledgement that the conditions of residence by nationals of third-countries are a matter of common interest and the need to facilitate their integration into the society of the host Member State, a relevant Resolution was adopted in 1996 and a Directive Proposal has been elaborated. Consequently, this section is divided into two parts; residence permits, and the status of foreigners residing on a long-term basis.

### **3.1. Residence Permits**

#### **EU *acquis***

- The EU *acquis* lays down a uniform format for residence permits and the specific security features and high technical standards it should contain so as to ensure protection against counterfeiting and falsification. The ultimate objective of that protection is to help prevent and combat illegal entry and residence.<sup>216</sup>
- Factors determining whether the authorisation is to be granted should include the level and stability of the foreigner's means of existence, in particular health insurance, and the conditions for exercising an occupation.<sup>217</sup>
- The authorization to reside is subject to there being no public policy or national security reasons for not granting it.<sup>218</sup>
- The principles of good administration, of appropriate channels of appeal and clear and transparent procedures fully apply to the issuance, renewal and withdrawal of residence permits.<sup>219</sup>

<sup>216</sup> See Council Regulation No. 1030/02 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals (hereinafter Council Directive 1030/02) and Council Decision 701 of 3 December 1998 on common standards relating to filling in the uniform format for residence permits (hereinafter Council Decision 701/1998).

<sup>217</sup> See Part IV, para. 2 of the Resolution of 4 March 1996 on the status of third-country nationals residing on a long-term basis in the territory of the Member States (hereinafter 1996 Resolution) and, future *acquis*, Arts. 6, 16, 17 and 18 of the 2001 Proposal for a Council Directive concerning the status of third-country nationals who are long-term residents (hereinafter 2001 Directive Proposal/Long-term residents).

<sup>218</sup> See Part IV, para. 1 of the 1996 Resolution and, future *acquis*, Arts. 7 and 13 of the 2001 Directive Proposal/Long-term residents.

<sup>219</sup> See Chapter 3. (4)(2) of Communication 757/2000, Arts. 41, 42 of the EU Treaty on Fundamental Rights and, future *acquis*, Arts. 11, 13, 19, 20, 21, 22 and 25 of the 2001 Directive Proposal/Long-term residents.



## ***The Albanian Legislation and Institutional Framework***

A residence permit is defined as the document issued by the Albanian authorities to enable foreigners to stay in the territory of Albania.<sup>220</sup> The foreigners who have obtained a residence permit can enter and exit Albania without a visa.<sup>221</sup> The application for a RP is lodged in the local police commissariats where the foreigner has chosen his/her temporary residence.<sup>222</sup> The Albanian legislation states that foreigners who are eligible to apply for a residence permit fall under two categories: foreigners that are allowed to enter Albania without a visa, and foreigners that have obtained a stay visa.<sup>223</sup> Thus foreigners who have been granted any other type of visa rather than a stay visa can not apply for a residence permit.

Foreigners applying for a RP must submit the following documents to the police commissariat:<sup>224</sup>

1. A written request for a RP.
2. A notarised copy of their passport.
3. Judicial status certificate obtained in the country of origin.
4. Good behaviour certificate issued by the police organs of the country of origin obtained in the last 6 months.
5. Housing contract and financial guarantees.<sup>225</sup>
6. Family certificate and photographs.
7. In case of the foreigner having a residence permit for employment purposes, they will also require a certificate to prove employment.

For certain categories of foreigners the issuance of a RP is prioritised or is subject to fewer requirements than for foreigners in general.<sup>226</sup> A RP can be for a duration of 3 months, 6 months, one year, 5 years, and permanent.<sup>227</sup> The 3 months and one year RP can be renewed no more than 3 consecutive times.<sup>228</sup> Albanian Authorities may restrict RPs for purposes of national security and defence.<sup>229</sup> For security reasons, foreigners are also required to declare any change of address to the police commissariat within 3 days of their move.<sup>230</sup> The authorities may also annul the RP if a foreigner stays out of the territory of Albania for certain periods specified by law.<sup>231</sup>

### ***Responsible Institutions***

- The Office for Foreigners, Local police Commissariat receives applications for RPs and their renewal. These offices fill in the RP for the foreigners; grant permission to foreigners to stay abroad (within the validity of their RP longer than the period stipulated by law);<sup>232</sup> and register any change of the address of the foreigners.
- The Sector for Passports and Foreigners within the Central Directorate of Public Order Police, MoPO is responsible for the issuance, renewal and revocation of RPs.
- The Minister of Public Order decides to discharge foreigners that have contributed to the interests of Albania from some requirements for a permanent residence permit.<sup>233</sup> (S)he is also responsible for reporting to the Parliament, inter alia, about the number of people that have obtained residence permits.<sup>234</sup> The Minister of MoPO is responsible for preparing and presenting bylaws concerning the form and procedures for the issuance of RPs to the Council of Ministers.<sup>235</sup>
- The Council of Ministers establishes the financial and business conditions for investors, merchants, busi-

<sup>220</sup> See Art. 2 of the LoF. Albania has a dual system of permits -residence permit and work permit.

<sup>221</sup> See Art. 15 of DCM No. 439/2000.

<sup>222</sup> See Art. 19 LoF, and Art 10 of DCM No. 439/2000.

<sup>223</sup> See Art. 19 of LoF. The experts working in this project were told by the Tirana Police Commissariat that in practice, the issuance of the residence permit was subject to prior existence of the residence visa.

<sup>224</sup> See Art. 10 of DCM No. 439/2000. See also Art. 12(2) of the Law on Asylum for special residence permits issued to asylum seekers.

<sup>225</sup> Such as a copy of the bank account, a copy of the legal documents for carrying out commercial activity or humanitarian activity.

<sup>226</sup> Such as students or foreigners who have helped national interests, or family members of nationals or of permanent residents. See Art. 23 of LoF, and Arts. 12 and 13 of DCM No. 439/2000.

<sup>227</sup> See Art. 20 of LoF, and Art. 10 of DCM No. 439/2000. A permanent RP is given for family reunification if one of the members of the family is an Albanian national or a permanent resident; and if the foreigner has lived in Albania for at least one year; and if the foreigner has obtained a 5-year RP and has consolidated activity in RoA. A permanent RP can also be given to the foreigners who have contributed for our interests. The Minister of PO may decide to release them from some of the requirements based on the recommendation of the Academy of Science. For further information see Art. 24 of LoF and Art. 13 of DCM No. 439/2000.

<sup>228</sup> See Art. 20 of LoF. Art. 21 of LoF provides that an application for the renewal of the RP must be lodged one month before the expiry of the current RP. The renewal is done within one month after the application has been filed.

<sup>229</sup> See Arts. 22 and 76 of LoF.

<sup>230</sup> See DCM No. 439, Art. 14.

<sup>231</sup> The RP is revoked if the foreigner stays abroad for more than 3 months if the RP is valid for one year; more than 6 months if the RP is 5 years; and for 2 years if the RP is permanent. See Art. 22 of LoF, Art. 16 of DCM No. 439/2000.

<sup>232</sup> See Art. 22 of LoF. The prolongation of the stay out of the country is done by the local Offices for Foreigners if the foreigner lodges a prior request.

<sup>233</sup> Supra, no. 226.

<sup>234</sup> Art. 73 of LoF on the obligation of the Minister of Public Order to report in Parliament.

<sup>235</sup> See Art. 83 of LoF.

nessman, trade partners and self-employed foreigners regarding the granting of a RP.<sup>236</sup>

- Diplomatic and Consular representative abroad receive the applications made by foreigners for the extension of the RP if they are not present in the territory of Albania.<sup>237</sup>

## Gap Analysis

### (a) Gap Analysis within the Albanian Legislation and the Implementation in Practice

#### Procedure for issuance of residence permits<sup>238</sup>

Foreigners considered eligible to apply for a RP in the Albanian legislation, in practice are not treated accordingly.<sup>239</sup> This discrepancy is not only a serious case of consolidated wrong implementation of legal provisions but is also an indication of insufficient co-ordination between the two Ministries – the MoPO and the MoFA.<sup>240</sup> Neither the LoF nor secondary legislation provides the timeframe for the issuance of RPs, although they do set the timeframe for its renewal at one month before expiry. According to information collected from the MoPO during the study, the time needed in practice for the assessment of the submitted documentation, consultation and reaching of the decision is usually between one and two months.

#### Appeal

The procedure of appeal for the refusal of RPs laid down in the LoF<sup>241</sup> is not clear, since the relevant article does not include either the necessary substantial information or appropriate references to the other acts containing that information.

### (b) Gap Analysis between the Albanian Legislation and the EU acquis

#### Security features of the residence permit

None of the three possible formats<sup>242</sup> of the Albanian RP complies with EU security standards for protection against counterfeiting and falsification.

#### Requirements for issuance of residence permits

The Albanian legislation should also mention sickness insurance as a requirement for the granting of RPs.

#### Grounds for refusal

Several of the grounds for refusal mentioned in the LoF are unclear and incompatible with the EU acquis.<sup>243</sup>

#### Principle of good administration, clear and transparent procedures

The inconsistency mentioned in Section (a) between the RP legislation and its implementation in practice and the lack of a timeframe for the granting or refusal of a RP are contrary to the principles of good administration and clear and transparent procedures so highly valued by the EU.

## Recommendations

#### Security features of the residence permit

The MoPO should raise the level of security of the Albanian RP to match EU standards. The filling in of the necessary information in the RP, once the EU format has been adopted, should be done according to the 1998 Council Decision on common standards relating to filling in the uniform format for residence permits.

#### Health insurance as one of the requirements for issuance of residence permits

The Albanian legislation should explicitly mention health insurance as a mandatory requirement for the issuance of RPs.

<sup>236</sup> See Art. 22 LoF.

<sup>237</sup> See Art. 16 DCM No. 439/2000.

<sup>238</sup> The study of the procedures applied by the competent structures of the MoPO, the Sector for Passports and Foreigners (SPF) in the General Directorate (GD) of Public Order Police and the Offices for Passports and Foreigners in the police commissariats, revealed a number of gaps which require special attention.

<sup>239</sup> Article 19 LoF stipulates that both 1) foreigners who are allowed to enter the Republic of Albania without a visa, in the Republic of Albania, and 2) foreigners provided with a stay visa can lodge an application for a RP. In practice, though, the officials responsible for the issuance of RPs require in all cases the possession of a long-term stay visa. This turns out to be a deadlock situation for visa-free foreigners who try to obtain the long-term visa required in practice for the RPs but meet with a refusal by the Albanian embassies and consulates to grant that visa, with the motive that they do not need it.

<sup>240</sup> The MoPO draft of amendments to the LoF creates further confusion by stating that these two categories of foreigners “are obliged to apply for RP.”

<sup>241</sup> See Art. 56 LoF.

<sup>242</sup> According to the Office for Foreigners of the MoPO, the formats are: a customised A4 standard format with attached photo (a RP for 3, 6 or 12 months), a booklet (a RP for 5 years and a permanent RP) or the stamp in the passport as equivalent to the stand-alone RP.

<sup>243</sup> See above Section 1(3)(b).

### **Uniform practice for issuance/renewal of residence permits**

The practice of issuance/renewal of a RP, including the categories of foreigners eligible to apply for a RP, should be uniform in all police commissariats, SPF, and consulates. The following measures should be undertaken:

- Art. 19 of the LoF should remain in its current form.
- The obligation to apply for a RP should be laid down in a separate article of the LoF stating that all foreigners who want to stay in Albania for more than 90 days have to apply for a RP.<sup>244</sup>
- Following the model of the EU Common Consular Instructions, a common manual describing all the steps of the issuance of the RP should be elaborated and distributed to all competent relevant authorities.
- The MoPO and MoFA should hold regular expert meetings for deliberation of the implementation of the immigration legislation (for example every 3 or 6 months).

### **Clear timeframe for issuance of residence permits**

The timeframe for the issuance of RPs should be explicitly foreseen in the LoF. It should be reasonable and reflect the workload and the administrative capacity of the competent authorities.

### **Appropriate provisions for appeal**

Article 56 LoF should be revised to include complete and clear information on appeal procedures.

### **Grounds of refusal**

A provision should be added under the Section on Residence permits of the LoF clearly containing all the grounds for refusal of RPs clearly and in line with the *acquis*.<sup>245</sup>

## **3.2. Status of foreigners residing on a long-term basis**

### **EU *acquis***

The fair treatment and successful integration of third country nationals, needed to maintain economic and social cohesion, is one of the major challenges which the EU faces with respect to immigration policy. As acknowledged in Tampere, the legal status of third country nationals, and particularly of those residing on a long-term basis, should be comparable to that of EU citizens. Long-term residents should enjoy a set of uniform rights as similar as possible to that of Member State nationals and should eventually be offered the opportunity to obtain the nationality of the country where they reside.<sup>246</sup> At present, the main features of the EU *acquis* in this field are:

- The 1996 Resolution sets the period of legal and continuous residence required for the granting of long-term status at ten years. The 2001 Proposal reduces that to five years. According to both, long-term residents should be granted residence authorization for at least ten years.<sup>247</sup>
- Certain categories of foreigners, such as students, researchers, refugees, members of the family of EU citizens, etc., are excluded from the field of application of the long-term residence *acquis*.<sup>248</sup>
- The long-term resident and the members of his/her family legally resident with him/her should enjoy the same treatment as nationals of the Member State concerned with regard to:<sup>249</sup>
  - Access to employment and working conditions.
  - Freedom of association and membership of trade unions.
  - Public policy in the sector of housing.
  - Social security and Emergency health care.
  - Social assistance (minimum income support, free health care, etc.).
  - Education and vocational training, compulsory schooling and recognition of qualifications.
  - Welfare benefits (family allowances, retirement pensions, etc.) and sickness insurance.
  - Access to the entire territory of the country.
- The Member State may refuse to grant long-term resident status where the personal conduct of the individual concerned constitutes a threat to public order or national security.<sup>250</sup>

<sup>244</sup> At the moment such principle text exists only in DCM No. 439/2000 but not in the LoF.

<sup>245</sup> See above, Recommendations of Section 1.3 of the Report.

<sup>246</sup> See Conclusions 18 and 21 of the Tampere European Council, Chapters 2(3) and 3(5) of Communication 757/2000, preamble of the 1996 Resolution and, future *acquis*, preamble of the 2001 Directive Proposal/Long-term residents.

<sup>247</sup> See Part III of the 1996 Resolution and, future *acquis*, Art. 5 and 9 of the 2001 Directive Proposal/Long-term residents.

<sup>248</sup> See Part II of the 1996 Resolution and, future *acquis*, Art. 3 of the 2001 Directive Proposal/Long-term residents.

<sup>249</sup> See Parts V, VI and VII of the 1996 Resolution, Chapter IV of the EU Treaty of Fundamental Rights and Chapter 2(3) of COM 757/2000 and, future *acquis*, Arts. 12, 18 and 24 of the 2001 Directive Proposal/Long-term residents.

<sup>250</sup> See Part IV, para. 1 of the 1996 Resolution and, future *acquis*, Arts. 7, 19 and 20 of the 2001 Directive Proposal/Long-term residents.

- Long-term resident status may be withdrawn only on certain grounds: absence from the territory for a period to be determined by national legislation but no less than six consecutive months; fraudulent acquisition of the status; or actual and serious threat to public order or national security.<sup>251</sup>
- Long-term residents will enjoy enhanced protection against expulsion. The conduct on which expulsion decisions are based must constitute an actual and sufficiently serious threat to public order or national security that affects a fundamental interest of society. Such decisions may not be founded on economic considerations. The specific factors related to the individual should be considered before taking a decision to expel a long-term resident (age of the person concerned, duration of residence, etc.).<sup>252</sup>
- Emergency expulsion procedures may not be used against long-term residents.<sup>253</sup>
- The foreigners residing on a long-term basis should be given the opportunity to eventually acquire the citizenship of the host country under the conditions laid down in the national legislation.<sup>254</sup>
- The principles of good administration; appropriate channels for appeal; clarity and transparency and non-discrimination common to the Member States' legal traditions and reflected in the EU Charter of Fundamental Rights, are of paramount importance regarding the status of long-term residents.<sup>255</sup>

### **Albanian Legislative and Institutional Framework**

In general, the Albanian legislation does not make any distinction between long term and temporary residents. However, in certain areas, Albania has recognised the need for further protection for foreigners who have lived in the territory for more than one year.<sup>256</sup> For example, foreigners who have legally stayed in Albania for more than one year have the right to lodge an appeal in court in case of a refusal to issue or renew the RP or in case of a removal order.<sup>257</sup> Furthermore, foreigners who have a permanent residence permit,<sup>258</sup> or, have been engaged in an economic activity and have had residence in Albania for more than 5 years; or have been resident in Albania from the age of 6, can only be expelled following an order from the Minister of Public Order.<sup>259</sup>

Foreigners resident in Albania for more than one year have the right to obtain a card for foreigners.<sup>260</sup> While foreigners who have been in Albania for 5 years or are of Albanian nationality, have obtained a temporary residence permit, and do not have the possibility to obtain a passport in the country of origin, are eligible to obtain a Passport for Foreigners.<sup>261</sup> The right of a Passport for Foreigners is also granted to refugees and foreigners who have a permanent residence permit.<sup>262</sup> For the latter, the Albanian legislation provides further facilities. Thus, permanent residents are not registered at the police commissariat but in the civil status office.<sup>263</sup> Permanent residents are employed without prior requirement to obtain a work permit.<sup>264</sup> They also, *de jure*, enjoy the same rights as nationals in relation to education and social insurance.<sup>265</sup>

Albania recognises the right to education, social insurance and health care also for non-permanent resident foreigners. Thus foreigners who work in Albania for Albanian employers, or work in Albania for foreign employers but do not enjoy a more favourable protection in the country of origin, have the right of social insurance in Albania.<sup>266</sup> Health insurance legislation provides that obligatory health care covers the foreigners of permanent residence in Albania, as well as foreigners employed and insured in Albania.<sup>267</sup> The Albanian legislation provides social assistance and social care only to foreigners who have lived in Albania for at least 10 years.<sup>268</sup>

<sup>251</sup> See Part VI of the 1996 Resolution and, future acquis, Arts. 10 and 25 of the 2001 Directive Proposal/Long-term residents.

<sup>252</sup> See Part VI of the 1996 Resolution, Chapters 2(3) of COM 757/2000 and, future acquis, Art. 13 of the 2001 Directive Proposal/Long-term residents.

<sup>253</sup> See future acquis, Art. 13 of the 2001 Directive Proposal/Long-term residents.

<sup>254</sup> See Conclusions 18 and 21 of the Tampere European Council, Chapters 2(3) and 3(5) of COM 757/2000.

<sup>255</sup> See Chapters 2(3) and 3(5) of COM 757/2000, Art. 13 of the Treaty establishing the European Community, Chapter IV of the EU Treaty of Fundamental Rights and, future acquis, Art. 4 of the 2001 Directive Proposal/Long-term residents.

<sup>256</sup> Albanian legislation does not define long term residents.

<sup>257</sup> See Art. 56 of LoF.

<sup>258</sup> See Art. 24 of LoF and Supra no. 218.

<sup>259</sup> See Art. 50 of LoF.

<sup>260</sup> See Art. 67 of LoF. See also in this report section 1.1 'Travel documents'.

<sup>261</sup> See Art. 68 of LoF and in this report section 1.1 'Travel Documents'.

<sup>262</sup> Ibid.

<sup>263</sup> See Art. 63 of LoF.

<sup>264</sup> See Art. 63 of LoF.

<sup>265</sup> See Art. 63 of LoF.

<sup>266</sup> As provided by Art. 7 of the Law on Social Insurance No. 7703/1993 and Instruction of SII No. 36/2003. During the time this project was carried out, no information about insurance of the foreigners on practice was made available. Representatives of the Social Insurance Institute and the Tirana Branch of Social Insurance explained that statistics maintained are not classified. As a result there are difficulties to know if or how many foreigners are insured.

<sup>267</sup> See Art. 4 of Law No. 7870/1994 on Health Insurance in the Republic of Albania.

<sup>268</sup> See Art. 4(2) of the Law on Social Assistance and Social Care.

In respect of rights pertaining to civil status, Albanian Laws state that foreigners of permanent residence are entitled to obtain ID cards, ID numbers, and have the right to be registered at the Civil Status Office.<sup>269</sup> In order to facilitate the integration and naturalisation of the long-term residents, Albania acknowledges the right of acquisition of Albanian Citizenship for foreigners who have been living in Albania for not less than 5 consecutive years.<sup>270</sup>

### **Responsible Institutions**

- The Office for Passports and Foreigners in the Police Commissariats receive applications for RPs and the acquisition/relinquishment of Albanian citizenship.
- The Office for Foreigners, Sector for Passports and Foreigners within MoPO is the authority that grants RPs and deals with the applications for the acquisition or relinquishment of Albanian Citizenship.
- The Minister of Public Order orders the expulsion of permanent residents and can take the decision as whether to forward applications for Citizenship to the Presidents Office.
- The Consulate and Diplomatic Missions abroad receive applications concerning the extension of residence permits<sup>271</sup> and for the acquisition/relinquishment of citizenship.<sup>272</sup>
- The General Directorate of Civil Status<sup>273</sup> and its Regional Offices, the Ministry of Local Governance and Decentralisation (MoLGD) are responsible for collecting, registering, providing information, and certifying the civil status of Albanian citizens, permanent foreigners and stateless persons.
- The Social Insurance Institute (an independent body monitored by MoLSA) and its regional and local offices, collect social insurance and health insurance contributions from economically active Albanian and foreign citizens. Health insurance contributions are forwarded to the National Health Insurance Institute.

### **Gap Analysis**

#### **(a) Gap Analysis within the Albanian Legislation and the Implementation in Practice**

Not applicable.

#### **(b) Gap Analysis between the Albanian Legislation and the EU *acquis***

##### **The legal stay of certain categories of foreigners**

The Albanian legislation does not exclude from the five-year legal sojourn precondition for permanent RP all the categories of foreigners excluded by the *acquis*.<sup>274</sup>

##### **Rights of long-term residents**

The LoF mentions that permanent residents enjoy the same right to education, social insurance, employment and self-employment and access to the entire territory as Albanian citizens but does not lay down the rest of the rights that long-term residents should equally enjoy according to the *acquis*. Moreover, it does not specify that the rights established for permanent residents also apply to the members of their families legally residing with them.<sup>275</sup>

##### **Grounds for refusal**

Several of the grounds for refusal mentioned in the LoF are incompatible with the EU *acquis* since they cannot be considered as related to public policy or security.<sup>276</sup>

##### **Protection in case of expulsion**

Contrary to the *acquis*, the Albanian legislation does not prohibit immediate execution of removal orders against permanent residents and does not, generally, provide them with the enhanced protection against

<sup>269</sup> See Art. 4 of the Law "On the Civil Status" No. 8950/2002; the Law On the Identification Documents of Citizens No. 8952/2002, and the Law on Identity Number No. 8951/2002. By the time this report was written, the ID card and ID number had not been issued even for nationals.

<sup>270</sup> See Art. 9 of the Law on Albanian Citizenship No.8389/1998 as amended by Law No. 8442/1999.

<sup>271</sup> See Art. 16 of DCM No. 439/2000.

<sup>272</sup> See Art. 17 of Law on Albanian Citizenship.

<sup>273</sup> Civil Status Service as provided by Art. 60, Law No. 8950/2002 is organised in descending order as follows: the General Directorate of the Civil Status Office (GDCS); the Civil Status Branch of Prefectures; the Civil Status Office of commune and municipality; and the Civil Status Service in the Albanian Embassies and Consular services abroad. The GDCS is the highest authority in the Civil Status Service (as provided by Art. 62 of Law No. 8950/2002) and has been recently established. It consists of two departments: the Department of Methodology and Control, and the Department of the National Register of Civil Status. The GDCS includes 36 regional offices and 408 local offices (information received in the meeting with the General Directorate of Civil Status Service representatives on 22 July 2003).

<sup>274</sup> Art. 24 LoF only excludes from the five-year requirement the family of Albanians or permanent residents and, under conditions, foreigners who have contributed to national interests.

<sup>275</sup> See Arts. 63 and 76 LoF.

<sup>276</sup> See Section 1(3)(b) Gap Analysis between the Albanian legislation and the EU *acquis*, Grounds for refusal.

expulsion required by the *acquis*. It merely states that permanent residents can only be expelled with an order from the Minister of Public Order but does not lay down the specific factors that should be taken into consideration, or the reasons that cannot be considered valid for the expulsion of a permanent resident.<sup>277</sup>

## **Recommendations**

### **Exclusion of certain categories of foreigners from the required five-year stay**

The LoF should exclude from the five-year legal sojourn precondition all those categories excluded by the current *acquis* and may also consider excluding the additional categories contained in the 2001 Proposal.

### **Rights of long-term residents**

The LoF should be revised to lay down that permanent residents should enjoy the same treatment as nationals also with regard to: working conditions; freedom of association and membership of trade unions; public policy in the sector of housing; social assistance (minimum income support, free health care, etc.); vocational training, compulsory schooling and recognition of qualifications; and health insurance. It should explicitly state that the minimum rights established for permanent residents also apply to the members of their families legally residing with them.

### **Grounds of refusal**

Those grounds of refusal that are incompatible with the *acquis* (see above) should be removed.

### **Prohibition of immediate execution of the expulsion order**

The LoF should be amended in order to state explicitly that the immediate execution of the expulsion order for permanent residents is prohibited. It should, moreover, be complemented with more detailed provisions on the justification of expulsion decisions for permanent residents in order to ensure as soon as possible the enhanced protection the *acquis* demands.

## **4. Family Reunification**

The issue of family reunification has been a priority for the EU since 1991. Family reunification has been one of the main vectors of immigration towards the EU in the last twenty years, and plays an essential role in the integration of third-country nationals. Moreover, to be coherent with its human rights policy, the EU has to include in its *acquis* appropriate provisions on family life and family unity in conformity with instruments of international and regional law protecting family life.<sup>278</sup> It is important to keep in mind that EU legislation on family reunification is a legislation of minimums, leaving the way open for Member States to adopt more favourable provisions.<sup>279</sup>

### **EU *acquis***

- The EU *acquis* defines family reunification as the entry into and residence in a Member State of family members of a third country national residing lawfully in that Member State in order to preserve the family unit, whether the family relationship arose before or after the resident's entry.<sup>280</sup>
- For EU family reunification *acquis* to apply, the foreigner should be in possession of a residence permit issued by a Member State for a period of one year or more and have reasonable prospects of obtaining permanent residence.<sup>281</sup>
- The family members entitled to family reunification are:<sup>282</sup>
  - The spouse.
  - Children of the resident and of his/her spouse who are minors, including adopted children.
  - Children who are minors, including adopted, of the resident and/or his/her spouse who are dependent on him or her and where (s)he have custody.

Minor children must be below the age of majority set by the law of the admitting state and must not be married.

- Member States may also authorise the entry and residence of the following family members:<sup>283</sup>
  - First-degree ascendants in the direct line.
  - Unmarried children above the age of majority.

<sup>277</sup> See Art. 52 LoF.

<sup>278</sup> See Chapter 2(3) of COM 757/2000, Arts. 7 and 9 of the EU Charter of Fundamental Rights, preamble of Council Directive 86 of 22 September 2003 on the right to family reunification (hereinafter Council Directive 86/2003) and Art. 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and relevant case-law of the European Court of Human Rights.

<sup>279</sup> See Art. 3, para. 5 of Council Directive 86/2003.

<sup>280</sup> Art. 2, para. (d) of Council Directive 86/2003.

<sup>281</sup> Art. 3 of Council Directive 86/2003.

<sup>282</sup> Art. 4, para. 1 of Council Directive 86/2003.

<sup>283</sup> Art. 4, paras. 2 and 3 of Council Directive 86/2003.

- Unmarried parents, if it is duly attested that there is a stable long-term relationship or a registered partnership.
- In case of a polygamous marriage, only one spouse should be admitted for family reunification. Children of ineligible wives may also be excluded from the right to reunification.<sup>284</sup>
- In order to prevent forced marriages Member States may require the spouses to be of a minimum age.<sup>285</sup>
- Member States may require the third-country resident to have stayed lawfully in their territory for a period not exceeding two years, before having his/her family members join him/her.<sup>286</sup>
- Member States may require evidence concerning:<sup>287</sup>
  - Proper accommodation.
  - Sickness insurance.
  - Stable and regular resources.
- It is left to Member States to determine whether only the sponsor may submit the application for family reunification or the family members may also do so. In principle the application will be submitted when the family members are residing outside the EU and, only in appropriate circumstances, it may be submitted when already in the EU. Written notification of the eventual decision of the authorities should be given to the applicant within nine months from the date of application. Reasons shall be given for rejecting the application.<sup>288</sup> Procedures for the examination of applications should be effective and manageable, non-discriminatory and transparent.<sup>289</sup>
- Member States may reject an application for entry and residence of family members, withdraw or refuse to renew a family member's residence permit on grounds of public policy, public security or public health. That cannot be done on the sole ground of illness or disability suffered after the issue of the residence permit.<sup>290</sup>
- Member States have to ensure, by establishing the appropriate procedure and competence, that the sponsors and/or his/her family have the right to launch a legal appeal against an eventual refusal or withdrawal.<sup>291</sup>
- The admitted family member will be issued a renewable first residence permit of at least one year and will be entitled in the same way as the resident to:<sup>292</sup>
  - Access to employment and self-employment.
  - Access to education.
  - Access to vocational guidance and training.
- At the latest after five years of residence the spouse or unmarried partner and the child who has reached majority shall be entitled to a residence permit, independent of that of the resident.<sup>293</sup>

### ***Albanian Legislative and Institutional Framework***

The Constitution of Albania states that the marriage and family enjoy special protection of the state.<sup>294</sup> The Albanian legislation provides that everyone has the right to get married and have a family.<sup>295</sup> Family, as stipulated by the Law on Foreigners, includes: the spouse; the parents, including stepmother and stepfather; children<sup>296</sup> under 18 years who are unmarried and live with parents; and any other member of the family legally cohabiting.<sup>297</sup>

In line with the Constitutional spirit to preserve and protect the family, Albania recognises the principle of family reunification.<sup>298</sup> Based on this principle, foreigners have the right to apply for a residence permit on the grounds of family reunification if one of the members of the family is an Albanian national, a refugee,<sup>299</sup> or a foreign resident with a valid RP of not less than one year.<sup>300</sup> As polygamy is not accepted in Albania, the

<sup>284</sup> See para. 10 of preamble and Art. 4, para. 4 of Council Directive 86/2003.

<sup>285</sup> Art. 4, para. 5 of Council Directive 86/2003.

<sup>286</sup> Art. 8 of Council Directive 86/2003.

<sup>287</sup> Art. 7 of Council Directive 86/2003.

<sup>288</sup> Art. 5 of Council Directive 86/2003.

<sup>289</sup> See para. 5 and 13 of preamble of Council Directive 86/2003.

<sup>290</sup> See para. 14 of preamble and Art. 6 of Council Directive 86/2003.

<sup>291</sup> Art. 18 of Council Directive 86/2003.

<sup>292</sup> Arts. 13 and 14 of Council Directive 86/2003.

<sup>293</sup> See para. 15 of preamble and Art. 15 of Council Directive 86/2003.

<sup>294</sup> See Art. 53(2) of CoA.

<sup>295</sup> See Art. 53(4) of CoA. Art. 7 of the Family Code, Law No. 9062 (approved by parliament on 8 May 2003 and will come into effect in January 2004) provides that marriage can be concluded between a man and a woman who have reached the age of 18. A marriage can be concluded before 18 years of age only with court authorisation. In cases when the wife is married but has not yet reached the age 18, she obtains the full legal capacity (See Art. 6 of the Civil Code No. 7850/1994).

<sup>296</sup> Art. 54(2) of CoA and Art. 4 of the Family Code Art. 4 proclaims equality between the children born within and out of wedlock; while Art. 259 proclaims equality between the adopted and natural born children.

<sup>297</sup> Art. 2 of LoF.

<sup>298</sup> See Art. 23 of LoF.

<sup>299</sup> For more details on issues relating to family reunification of refugees see Art. 6 of the Law on Asylum and Law No. 9098/2003 "On Integration and Family Reunification of Foreigners Granted Refugee in the RoA".

<sup>300</sup> See Art. 23 of LoF.

Law on Foreigners emphasises that if the foreigner resident in Albania has more than one spouse, (s)he must choose only one of them for the purposes of family reunification.<sup>301</sup>

The request for a RP based on family reunification is accepted even in the case of cohabitation *without* marriage with a foreign resident in Albania, if the country of origin accepts the cohabitation between two persons of different gender as legal.<sup>302</sup> However, family reunification shall not be considered a valid ground to issue a RP to foreigners if marriage or adoption has taken place after an order removal has been issued for the applicant.<sup>303</sup>

Albanian law recognises the right to a permanent RP to the members of the family of Albanian nationals or foreign citizens with permanent residence on the grounds of family reunification.<sup>304</sup> Furthermore, the spouse of an Albanian citizen can obtain a WP with priority over other foreigners without taking the market conditions into consideration, provided that (s)he has a RP and cohabitates with the Albanian spouse.<sup>305</sup>

Favourable conditions are stipulated also in respect of the acquisition of Albanian citizenship and expulsion. Thus a foreigner who has been married to an Albanian national for a period of 3 years can acquire Albanian citizenship after 1 year of continuous residence in Albania.<sup>306</sup> Also, family members of an Albanian citizen or permanent resident can be expelled only by order of the Minister of Public Order.<sup>307</sup>

### **Responsible Institutions**

- MoPO is the competent organ for issuing RPs and for processing applications for Albanian Citizenship.<sup>308</sup>
- The Minister of Public Order is the only authority to decide on the expulsion of the family members of Albanian citizens or permanent residents.<sup>309</sup>
- The Office for Refugees under MoPO is competent to decide on the requests for family reunification of persons granted asylum.<sup>310</sup>
- MOLSA is the competent institution dealing with WPs.<sup>311</sup>
- The President of the Republic issues the respective decrees for the acquisition or relinquishment of Albanian Citizenship.<sup>312</sup>

### **Gap Analysis**

#### **(a) Gap Analysis within the Albanian Legislation and the Implementation in Practice**

##### **Minor children entitled to family reunification**

The LoF<sup>313</sup> defines “children under 18 years old, unmarried and who live with the parents” as family members and thus as eligible for family reunification. Decision 439/2000 mentions that the child of a legal resident in Albania may apply for family reunification.<sup>314</sup> These two provisions are clearly inconsistent, since the LoF only considers children who are unmarried and living with their parents as family members eligible for reunification, while the Decision does not mention those two additional requirements.

##### **Necessary documentation**

Decision 439/2000 lays down the documentation to be submitted for the family reunification of: a) the spouse and dependant relatives of an Albanian citizen; b) the spouse and minor children of foreigners legally resident in Albania; c) the dependant family members of certain categories of foreigners residing in Albania. The LoF, on the other hand, does not refer to those provisions of Decision 439/2000 and does not lay down any kind of specific documentation to be submitted when applying for family reunification, thus creating the impression that the general documentation submitted for residence permits is sufficient.

<sup>301</sup> Ibid. Art. 9 of the Family Code prohibits bigamy in Albania.

<sup>302</sup> See Art. 23 of LoF.

<sup>303</sup> Ibid.

<sup>304</sup> See Art. 24 of LoF.

<sup>305</sup> See Art. 33 of LoF.

<sup>306</sup> See Art. 10 of the Law on Albanian Citizenship.

<sup>307</sup> Art. 50 of LoF.

<sup>308</sup> See in this report section 3.1 on RP and the Law on Albanian Citizenship.

<sup>309</sup> Art. 50 of LoF.

<sup>310</sup> This office was formally under the MoLGD and came under MoPO only in July 2003. For procedures on Family reunification of persons granted asylum see Chapter VI of the Law on Integration and Family Reunification of Foreigners Granted Refugee in RoA.

<sup>311</sup> See Arts. 26-27 of LoF.

<sup>312</sup> See Art. 20 of the Law on Albanian Citizenship.

<sup>313</sup> See Art. 2 LoF.

<sup>314</sup> See para. 10/1 of Decision 439 of 04/08/2000 as amended by para. 4 (c) Decision 532/2001 and also para. 20 of the Joint Instruction 1460/2001.



That leaves a serious gap since general requirements are not sufficient because specific documentation proving the relationship between the foreign resident and the family members applying for reunification is obviously needed. Confusion or even contradiction is created between the provisions of the Decision and those of the LoF regarding the requirements that apply to family reunification. Even if the provisions of Decision 439/2000 are to be understood as additional to the general ones established by the LoF and not as contradictory, they only cover the spouse and children of the foreigner and leave a gap concerning the rest of the family members mentioned in the LoF.

## **(b) Gap Analysis between the Albanian Legislation and the EU *acquis***

### **Structure of provisions**

The importance of family reunification both for the migrant and for the admitting State and its specific nature as an essential right so closely interrelated with other fundamental and internationally protected rights are reflected in the way this issue is regulated in the *acquis*. The right to reunification is not merely included as a separate case in the *acquis* regulating the general issues of entry, residence, or employment but is treated as a separate and individual issue with specific and detailed provisions covering all facets of immigration from entry and residence to removal. That is not the case in the Albanian legislation, where it is not only insufficiently regulated but it is, furthermore, fragmented and scattered between the different chapters of the LoF and the relevant secondary legislation.<sup>315</sup>

### **Family members entitled to reunification**

From the wording of Article 2 LoF and point 10/1 of Decision 439/2000<sup>316</sup> it seems that the minor children of the spouse of the foreign resident are not included in the members eligible for family reunification, at least not until (s)he has also obtained the status of legal resident in Albania. Apart from that, as mentioned above, it is not clear from those two provisions whether the only minor children eligible for family reunification are the ones living with the parents, which would be contrary to the *acquis* since it does not include such a requirement. Although the LoF does not explicitly refer to adopted minor children, it can be deduced from the relevant Albanian Family Code provisions<sup>317</sup> and from the reference to adoption in Article 23 LoF that they are included in the term “children”, so no gap is found in relation to that.

### **Family members who may be entitled to family reunification**

As the EU *acquis* only allows and does not obligate Member States to authorize entry and residence for the following ascendants, there are no gaps between the Albanian legislation and the *acquis* in this regard. Nevertheless, the differences between the Albanian legislation and the *acquis* are stated below for future reference.

- First-degree ascendants in the direct line of the foreign resident or his/her spouse, where they are dependent on them and do not enjoy proper family support in the country of origin.

With regard to the first-degree ascendants of the foreign resident, the Albanian legislation admits all such ascendants as family members, even though they are not dependent on the resident and do enjoy proper family support in the country of origin. With regard to the first-degree ascendants of the spouse of the foreign resident, it is not clear in the Albanian legislation whether such ascendants can be included in the “parents, stepfather, stepmother” category of the LoF definition of family members, as there are no clear definitions of these terms.<sup>318</sup>

- Unmarried children above the age of majority, who are unable to provide their own needs because of health conditions.

Although there is no clear provision defining the age of majority in general in the Albanian legislation, it can be deduced from various provisions that it is eighteen.<sup>319</sup> No unmarried children above the age of eighteen are entitled to family reunification according to the LoF, unless such children are identified as “other members of the family who are legally coexisting”, a phrase used in the LoF but not defined in any way.<sup>320</sup>

### **Procedures for the application, assessment and issuance of family reunification residence permits**

The Albanian legislation does not provide “effective and manageable”, “transparent and fair” and non-discriminatory procedures for residence permits.<sup>321</sup>

<sup>315</sup> See Chapter I, Art. 2, Chapter II, Art. 9, Chapter III, Arts. 23, 24, Chapter IV, Art. 33 and Chapter V, Art. 50 LoF and, also, paras. 3 and 4 of Decision 532/2001 on some changes to Decision 439/2000.

<sup>316</sup> See above; Section a) Gap analysis within Albanian Legislation and implementation in practice.

<sup>317</sup> See Art. 4 and Chapter VI of the Albanian Family Code as well as the 1993 Hague Convention on Protection of Children and Cooperation in respect of Inter-country Adoption, which has been in force in Albania since 1/1/2001.

<sup>318</sup> See Art. 2 LoF.

<sup>319</sup> Art. 6 of Civil Code (Law No. 7850, 29 July 1994); Arts. 73 and Art. 105 et al Family Code (Law No. 6599, 29 June 1982). The new Family Code (Law No. 9062, 8 May 2003), also contains several provisions (Art. 7 et al), which may have been drafted based on the understanding that the age of majority is eighteen.

<sup>320</sup> See Art. 2 LoF.

<sup>321</sup> See Section 3.1 on Residence Permits.

### **Refusal of family reunification**

The Albanian legislation does not provide specific grounds for rejection of entry and residence of family members, or withdrawal or refusal of renewal of residence permits of family members and thus the general provisions for residence permits apply to the cases of family reunification. Several of these provisions are not in line with the EU *acquis*.<sup>322</sup> Moreover, taking into account the specific nature of the issue of family reunification and the specific additional requirements that apply to it, general refusal or withdrawal grounds do not seem sufficient. The *acquis* specifically states that when refusing or withdrawing a permit for family reunification, due account has to be taken of factors such as the nature and solidity of the person's family relationships and the existence of family, cultural and social ties with the country of origin. Such considerations are not mentioned in the LoF in relation to family reunification.

### **Length of the first residence permit for family members**

There is a gap, as the length of the first residence permit for a family member could be shorter than one year<sup>323</sup> according to the Albanian legislation, whereas the *acquis* requires a duration of at least one year.

### **Residence permit of the family member, independent of that of the foreign resident**

There are no rules<sup>324</sup> in the LoF concerning the possibility for a family member admitted on the virtue of family reunification to obtain an autonomous residence permit after a certain period of time or in particularly difficult circumstances. The *acquis* states that such a permit should be issued after a maximum of five years of legal residence or in exceptionally difficult situations.

### **Access to employment, education, and vocational training in the same way as the foreign residents**

There is a gap as there are no particular provisions concerning such access in the Albanian legislation. Article 63 LoF, which provides the right to education, social insurance and access to employment and self-employment in the same way as nationals, only applies to permanent residents, while Article 33 LoF that gives priority in the issuance of work permits applies only to spouses of Albanian citizens.

### **Recommendations**

#### **Structure of provisions**

For the sake of clarity, transparency and efficiency and in accordance with the specific nature and importance of family reunification, it should be dealt with in a separate chapter of the LoF and not be divided between the different chapters and secondary legislation.

#### **Requirements and necessary documentation**

The inconsistent provisions currently existing between the LoF and secondary legislation on this issue should be removed and a clear provision should be included in the LoF laying down the requirements to be fulfilled and the documentation to be submitted when applying for family reunification entry and residence.

#### **Family members entitled to reunification**

The unclear definition of family members of Article 2 LoF should be replaced with a specific provision clearly defining all the family members eligible for reunification and forming part of a chapter on family reunification in the LoF. To cover the gaps currently existing, it should be clearly stated that the minor unmarried children of the spouse of the foreign resident, where (s)he has custody and are dependent on him/her, are also eligible for family reunification. The phrase "living with the parents" should be removed.

#### **Family members who may be entitled to family reunification**

As mentioned before, the *acquis* leaves the family reunification of these family members to the discretion of the Member States but, since the Albanian legislation chooses to include them, certain recommendations can be made. It should be clarified whether "parents, stepmother and stepfather" includes the parents and stepparents of the resident and also those of his/her spouse. The phrase "other family members who are legally coexisting" should be replaced with a clearer provision defining the exact range of other relatives entitled to family reunification.

<sup>322</sup> Ibid.

<sup>323</sup> According to Article 20 of the LoF, RPs can be for three months, six months, one year, five years and permanent, and the residence permits with a period of three months, six months and one year can be renewed. See above, Section 3.1 on RPs.

<sup>324</sup> Please note however that, according to Article 24 of the LoF, all foreigners who have had a residence permit with a duration of five years and have a permanent connection or activity in Albania can request permanent residence permits. However, in order to apply for a five-year's residence permits, a foreigner is required to have stayed in Albania legally for two years consecutively. (Art. 20, LoF).

### **Procedures for the application, assessment and issuance of family reunification residence permits**

Specific provisions clearly laying down the procedures, timeframes and competent authorities for family reunification applications, their assessment and the issuance of the permits should be included in a chapter on family reunification in the LoF.

### **Refusal of family reunification**

The grounds for the refusal of a family reunification application and for the refusal of the renewal or the withdrawal of such a permit should be clearly stated in a provision under a chapter on family reunification in the LoF. The factors that the *acquis* requires to be taken into account when refusing family reunification applications or refusing and withdrawing such permits or deciding to order the removal of persons enjoying that status should also be clearly laid down in the LoF. Those of the general grounds for refusal already existing in the LoF, which are not compatible with the *acquis*,<sup>325</sup> should be removed.

### **Length of the first residence permit for family members**

The length of the first residence permit granted to the accepted family members should not have a duration of less than one year.

### **Residence permit of the family member, independent of that of the foreign resident**

Family members should be entitled to an autonomous residence permit, not later than after five years of residence for the purpose of family reunification, or even before if justified by particularly difficult circumstances. The possibility to grant an autonomous permit could also be foreseen for cases of widowhood, divorce, separation, or death of first-degree relatives in the ascending or descending line.

### **Access to employment, education, and vocational training in the same way as the foreign residents**

The LoF should explicitly lay down that the accepted family members will be entitled in the same way as the resident to: Access to employment and self-employment; Access to education; Access to vocational guidance and training.

## **5. Unaccompanied Minors**

The issue of unaccompanied minors is closely related to several aspects of immigration: entry, family reunification, illegal migration and trafficking. The treatment of minors is based on the common acknowledgement that they are in a particularly vulnerable situation, so they need special safeguards and protection. The most important principle governing the *acquis* in this field is that **the best interest of the child should be a primary consideration**. EU provisions are without prejudice to the UN Convention on the Rights of the Child of 20 November 1989 and the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms as well as to more favourable provisions of Member State legislation.<sup>326</sup>

### **EU *acquis***

- The *acquis* defines unaccompanied minors as third-country nationals below the age of eighteen, who:
  - Either arrive on the territory of a Member State unaccompanied by an adult responsible for them by law or custom, and for as long as they are not effectively in the care of such a person.
  - Or are left unaccompanied after they have entered the territory of the Member States.<sup>327</sup>
- Member states may refuse, in accordance to their national legislation, admission at the border to unaccompanied minors in particular if they are without the required documentation and authorisation.<sup>328</sup> This principle is applied without prejudice to the right of asylum and the protection of victims of trafficking.<sup>329</sup>
- Unaccompanied minors should receive all necessary material support and care to satisfy their needs, such as food, accommodation suitable for their age, medical care, access to education, legal guardianship and representation.<sup>330</sup>
- The state concerned should endeavour to establish a minor's identity as soon as possible after arrival,

<sup>325</sup> See Section 3.1 on Residence Permits.

<sup>326</sup> See preamble and Art. 1, para. 4 of Council Resolution of 26 June 1997 on unaccompanied minors who are nationals of third countries (hereinafter 1997 Resolution/Minors). See also Art. 24 of the EU Charter of Fundamental Rights and Art. 3 of the UN Convention on the Rights of the Child of 20 November 1989.

<sup>327</sup> Art. 1 of 1997 Resolution/Minors.

<sup>328</sup> Art. 2, para.1 of 1997 Resolution/Minors.

<sup>329</sup> See Art. 2, para.1 and Art. 4 of 1997 Resolution/Minors.

<sup>330</sup> Art. 2, para. 3 of 1997 Resolution/Minors.

and also the fact that (s)he is unaccompanied. Information on the minor's identity and situation can be obtained by various means, in particular by means of an appropriate interview, which should be conducted as soon as possible and in a manner that takes into consideration his/her age.<sup>331</sup>

- The unaccompanied minors may only be returned to their country of origin or a third country prepared to accept them, if on arrival therein - depending on their needs in the light of age and degree of independence - adequate reception and care are available. This can be provided by parents or other adults who take care of the child, or by governmental or non-governmental bodies.<sup>332</sup>

### **Albanian Legislative and Institutional Framework**

The right of children to enjoy special protection by the State is proclaimed by the Albanian Constitution,<sup>333</sup> which states that the best interest of the child should be the primary consideration of parents, courts, and other competent authorities.<sup>334</sup> In this context, the Law on Foreigners states that children<sup>335</sup> under 16 years old may apply for a visa to enter Albania only on the prior permission of their parents or the legal custodian, unless they enter as asylum seekers.<sup>336</sup> Upon entrance in Albanian territory, minors are excluded from the obligation to register themselves in police commissariats.<sup>337</sup> A Laissez-passer for children is accepted as a valid travel document by the Albanian Authorities.<sup>338</sup>

The regulation on the functioning of the reception centres and temporary treatment of those foreigners who are not asylum seekers<sup>339</sup> envisages that unaccompanied minor sheltered in these reception centres shall be provided with the necessary care as established by the UN Convention on the rights of the child.<sup>340</sup> On the other hand, the Albanian legislation provides that the district court shall appoint one guardian for minors who do not have parents or their parents are unknown.<sup>341</sup> The court may decide also to place such children in public or private institutions.<sup>342</sup> Special provisions regulate the regime of children entering Albania as asylum seekers.<sup>343</sup> They shall be placed in special accommodation suitable for children; only as a last resort they can be held in prison like conditions.<sup>344</sup> Also, a guardian shall be appointed to present and protect the legal interests of an unaccompanied asylum seeker under the age of 18.<sup>345</sup>

### **Responsible Institutions**

- MoLSA is the responsible organ for the child welfare institutions at a local and national level, including orphanages, centres for children with disabilities etc.
- District courts are the competent authority for deciding on the guardian of the minor, or for placing the minor in any child care institution.<sup>346</sup>

## **Gap Analysis**

### **(a) Gap Analysis within the Albanian Legislation and the Implementation in Practice**

#### **Age of minors**

There is a contradiction between different provisions of the LoF regarding the age of minors. Articles 6, 9 and 66 LoF only treat persons under sixteen as minors, while Article 2 LoF mentions "children under eighteen". The provisions setting the limit at sixteen also contradict other provisions of the Albanian legislation, which include all persons under eighteen in the category of minors.<sup>347</sup>

<sup>331</sup> Art. 3 of 1997 Resolution/ Minors.

<sup>332</sup> Art. 5 of 1997 Resolution/Minors.

<sup>333</sup> Art. 54 of CoA.

<sup>334</sup> As provided by Art. 2 of the Family Code, 9062/2003.

<sup>335</sup> In accordance with Art. 6 Civil Code 7859, 29.07.1994 a person reaches the maturity at 18 years old.

<sup>336</sup> Art. 6 of LoF.

<sup>337</sup> Art. 66 of LoF.

<sup>338</sup> Art. 9 of LoF.

<sup>339</sup> Established by DCM No. 46/2002 For the approval of the regulation "On the reception centres and temporary treatment of the foreigners who are not asylum seekers" (hereinafter DCM No. 46/2002).

<sup>340</sup> See DCM No. 46/2002. Art. 11 of the Regulation does not mention which shall be considered as the necessary care, but referring to the UN Convention on the rights of the Child, the children must be placed in institutions which meet the standards in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision and shall have the right to meet their parents, the freedom of speech etc. At the time this report was written, no reception centres of this type had been established. (Information obtained by IOM-Tirana.) Reception centres established by IOM only deal with irregular migrants and victims of trafficking returned on a voluntary basis.

<sup>341</sup> See Art. 263-271 of the Family Code; and the Law on Assistance and Social Care No. 7710/1993. See also Law No. 8153/1996 'On the Status of Orphan', which defines the terms "Orphan" and "Minors abandoned by unknown parents". See also the Law No. 7650/1992 'On the adoption of the Minors from Foreigners.

<sup>342</sup> See Art. 263-271 of the Family Code.

<sup>343</sup> See Law No. 8432/1998 'On Asylum in the Republic of Albania.

<sup>344</sup> See Art.16 of the Law on Asylum.

<sup>345</sup> See Art. 18(4) of the Law on Asylum.

<sup>346</sup> See Family Code, Arts. 263-271.

<sup>347</sup> See above, Section 4, Family Reunification.

## **Material support and care while waiting for the decision concerning admission at the border**

There is no reference in the LoF to Article 11 of Decision 46/2002, which states that unaccompanied minors will be provided with the necessary care as established in the UN Convention on the Rights of the Child.<sup>348</sup>

### **(b) Gap Analysis between the Albanian Legislation and the EU acquis**

#### **Definition of unaccompanied minors**

There is no definition of “unaccompanied minor” neither in the LoF, nor in the Law on Asylum. The only provision in the LoF that refers to minors is Article 6, which restricts the entry of foreigners under 16 years old without permission of their legal custodians and not accompanied by an adult.<sup>349</sup> Exception is made only for the asylum-seekers. This legal provision is not only insufficient compared to the acquis, but also contradicts both the acquis and the UN Convention on the Rights of the Child of 1989<sup>350</sup>, which define “the minor” (including the unaccompanied minor) as any person below the age of 18. This is a serious gap because it excludes the special protection of minors between 16 and 18 years. Moreover, from the Albanian provision it cannot be ascertained whether minors who have entered Albania with their parents or guardians but have been left afterwards are also considered unaccompanied minors.

#### **Establishing the identity of unaccompanied minors**

There is a gap, as there are no particular provisions for establishing the identity of unaccompanied minors.<sup>351</sup>

#### **Return of unaccompanied minors**

There is a gap as the LoF does not provide the special conditions required by the *acquis* under which unaccompanied minors may be returned to the country of origin or sent to a third country.

### **Recommendations**

#### **Comprehensive legal provisions on unaccompanied minors**

Comprehensive legal provisions on unaccompanied minors should be adopted both in the LoF and the bylaws on its implementation, stating the definition, competent authorities, procedures and the special protection which should apply to unaccompanied minors.

#### **Aligning the maximum age of a minor in the LoF with the relevant international and Albanian acts**

The Albanian legislation should be revised so as to accept all persons under eighteen as minors.

#### **Creating a capacity in the Albanian institutions to deal independently with unaccompanied minors**

The relevant Albanian authorities (the MoLSA and the MoPO) should enhance their capacity to deal independently with unaccompanied minors and to provide them with the necessary protection and assistance.

## **6. Combating Illegal Migration**

With the entry into force of the Treaty of Amsterdam and the inclusion of new Title IV in the EC Treaty, new competencies were created in the field of migration. Article 63 paragraph 3 TEC confers explicit powers to the Community to adopt measures on illegal immigration and illegal residence, including repatriation of illegal residents.<sup>352</sup> Increasingly since the Tampere European Council, the fight against illegal migration has been focused on tackling it at its source<sup>353</sup> through the development of an “actors in the chain” approach in which countries of origin, transit and destination are involved at various stages of the process. Thus, the control of illegal migration is increasingly part of the EU policy agenda, both in connection with unauthorised crossing of the border in the strict sense, and for the purpose of combating networks; which exploit human beings.<sup>354</sup> On the other hand, the development of a policy to combat irregular immigration takes

<sup>348</sup> Please note that there is also no reference to the Albanian Constitution, which provides for the special protection of children in general (Art. 93 CoA) and to the Law on Asylum which provides for a special arrangement suitable for children (Art. 16(5)).

<sup>349</sup> The LoF (Arts. 6, 9, 66, and 67) stipulates special conditions for “persons under 16 years old”. However, as stated above in “Part II. A. 4. This division is also inconsistent with other Albanian legislation (Civil Code, Family Code, etc.).

<sup>350</sup> Ratified by Albania on 27 February 1992.

<sup>351</sup> Please note that the Law on Asylum provides for the responsible authorities to take all necessary steps in establishing the identity of asylum seekers in general (Art. 22).

<sup>352</sup> *Ibid.*

<sup>353</sup> Conclusion 23 of the Tampere European Council

<sup>354</sup> According to Communication 672/2001 and to the Return Action Programme adopted in November 2002, the fight against illegal immigration relates to six fields - visa policy, infrastructure for information exchange, border management, police cooperation, aliens and criminal law and return and readmission - a number of which are elaborated in other sections of this report.

into account Member States obligations under international law and human rights conventions.<sup>355</sup>

## 6.1. Illegal Residence

Provisions for illegal residence in the Member States are closely connected to illegal entry and illegal employment. The *acquis* applies provisions both to illegal residents, and to those who facilitate illegal residence.

### EU *acquis*

- The *acquis* recommends the harmonisation of the means of checking on foreign residents to ensure that they fulfil the conditions for entry, residence and employment. In conformity with national legislation, checks should be undertaken on persons suspected of staying without authorisation, and on persons who have received authorisation for residence but not for employment.<sup>356</sup>
- Before benefits provided by a public service in the area of health, retirement, family or work can be granted, it must be verified, except where humanitarian grounds dictate otherwise, that the residence and employment situation of the person concerned and his or her family does not disqualify them from the benefit.<sup>357</sup>
- Third-country nationals who have entered or remained unlawfully in Member States (where their stay has not been regularised) should be expelled, unless there are compelling humanitarian reasons for not doing so.<sup>358</sup>
- The competent authorities should take steps to check that people who have been refused authorisation to reside within the territory of the Member State have actually left. A national central file holding information on the administrative situation of foreigners could be set up for this purpose.<sup>359</sup>
- The facilitation of illegal entrance, transit or residence<sup>360</sup> should be subject to criminal penalties, which should be effective, proportionate, and dissuasive. Criminal penalties may be accompanied by the following measures: Confiscation of the means of transport used to commit the offence; prohibition on practising directly or through an intermediary the occupational activity in the exercise of which the offence was committed; and expulsion.<sup>361</sup>
- Effective, proportionate and dissuasive criminal penalties should also be foreseen for the instigator and the accomplice, as well as for the attempts to facilitate illegal entrance, transit or residence.<sup>362</sup>
- Beside the criminal proceedings against the natural persons, legal persons should also be held liable for the facilitation of illegal entry, transit or residence which is committed for their benefit by any person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on a power of representation of the legal person, an authority to take decisions on behalf of the legal person, or to exercise control within the legal person. Sanctions against the legal person may include: Fines; exclusion from entitlement to public benefits or aid; temporary or permanent disqualification from the practice of commercial activities; placing under judicial supervision and a judicial order for liquidation.<sup>363</sup>

### **Albanian Legislative and Institutional Framework**

The Draft Action Plan on the Improvement of the Free Movement of People<sup>364</sup> emphasises *inter alia* the need for elaboration and harmonisation of the Albanian legislation in the field of the border control and management with that of the EU, the establishment of an effective database for registration of all Albanians and foreigners that enter and exit Albania; penal sentencing of persons that illegally cross the border and of the persons that aid and abet them; and improving the legislation that may create facilities for clandestine migration.

<sup>355</sup> Ibid.

<sup>356</sup> See Arts. 3, 4 and 6 of Recommendation of 1 June 1993 concerning checks on and expulsion of third-country nationals residing or working without authorisation (hereinafter 1993 Recommendation) and Arts. 1, 5 and 10 of Recommendation of 22 December 1995 on harmonising means of combating illegal immigration and illegal employment and improving the relevant means of control (hereinafter 1995 Recommendation).

<sup>357</sup> See Art. 4 of 1995 Recommendation.

<sup>358</sup> See Art. 1 of 1993 Recommendation and Art. 1 of Recommendation of 30 November 1992 regarding practices followed by Member States on expulsion.

<sup>359</sup> See Art. 7 of 1995 Recommendation.

<sup>360</sup> According to Directive 90/2002 the concept of facilitation consists in: a) a person intentionally assisting a person who is not a national of a Member State to enter, or transit across, the territory of a Member State in breach of the laws of the State concerned on the entry or transit of aliens and b) a person intentionally assisting, for financial gain, a person who is not a national of a Member State to reside within the territory of a Member State in breach of the laws of the State concerned on the residence of aliens.

<sup>361</sup> See Art. 1 and 3 of Council Directive 90/2002 defining the facilitation of the unauthorised entry, transit, and residence (hereinafter Council Directive 90/2002), Art. 1 of Council Framework Decision of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of the unauthorised entry, transit and residence (hereinafter 28 November 2002 Framework Decision) and Art. 27 of the Schengen Convention.

<sup>362</sup> Art. 2 of Council Directive 90/2002 and Art. 1 of 28 November 2002 Framework Decision.

<sup>363</sup> See Arts. 2 and 3 of 28 November 2002 Framework Decision.

<sup>364</sup> Draft Action Plan dated 08.07.2003.

At present illegal crossing of the state borders is classified as a criminal activity and is punishable by a fine or up to two years of imprisonment. When illegal crossing of borders is done for reasons of profit it is punishable by imprisonment of up to 10 years.<sup>365</sup> The Albanian Legislation also foresees sentences for those who assist or support illegal crossing of borders. Thus providing transport assistance for the illegal crossing of the border is punishable by a fine or up to three years of imprisonment, or up to seven years of imprisonment if it is given for profits and when the commitment of this criminal offence has, as a consequence, caused the death or injury to other persons, the punishment given is not less than 7 years of imprisonment.<sup>366</sup>

In line with the Criminal Code, the Law on Foreigners mentions that foreigners engaged in trafficking of clandestine in Albania or their transiting, or in any other illegal trafficking shall be refused entry, visa and RP.<sup>367</sup> Aimed at tracing and fighting illegal entry, stay and employment, the Albanian legislation also provides for: a) legal obligation of administrative and judicial institutions to notify the migration authorities of undesirable persons or any other case of illegal stay or employment of the foreigners;<sup>368</sup> b) legal obligation of hotels, hostels or other entities to register the foreigners they accommodate;<sup>369</sup> c) legal obligation of foreigners who want to reside in Albania for more than one year to register with the police.<sup>370</sup>

In addition, the Law on Foreigners enumerates a list of activities, which are considered administrative contravention<sup>371</sup> in the field of illegal entry, residence and employment and determines the respective fine imposed on the violators of the provision.<sup>372</sup>

### **Responsible Institutions**

- The Border Police is the responsible organ for detecting and investigating cases of illegal migration at the border and in the border area.
- Public Order Police and Criminal Police are responsible for detecting and investigating cases of illegal migration within the territory.<sup>373</sup>
- Police inspectors (one for every neighbourhood) deal with the regular control of the area they cover.
- Prosecutor offices and Courts deal with the cases of illegal crossing of the border.<sup>374</sup>

(Due to insufficient information and lack of statistical data, this section has focused on the legal framework for combating illegal entry and residence and not on the law-enforcement practices).

### **Gap Analysis**

#### **(a) Gap Analysis within the Albanian Legislation and the Implementation in Practice**

##### **Appropriate implementation of provisions and undertaking of checks**

The Albanian legislation contains provisions for the presentation and, where required, registration of foreigners at the police commissariats.<sup>375</sup> The LoF also includes a provision conferring powers to the police to carry out different checks of the foreigners, including verification of their documents and identity, of the purpose of their stay and their activities and physical search.<sup>376</sup> However, there is no reliable or sufficient information as to whether these provisions are properly implemented and the checks foreseen actually carried out. Moreover, although there is a provision obliging the foreigners that are provided with a card for foreigners to always carry and show it when requested,<sup>377</sup> there is no legal provision for those foreigners

<sup>365</sup> See Art. 297 of the Criminal Code No. 7895/1995 amended by Law Nos. 8204/1997; 8279/1998; 8733/2001.

<sup>366</sup> See Art. 298, *Ibid.*

<sup>367</sup> See Art. 4(7) of LoF.

<sup>368</sup> See Art. 60 of LoF.

<sup>369</sup> See Art. 61 of LoF.

<sup>370</sup> See Art. 66 of LoF. Difficulties exist to understand the intention of the legislation when it states '*that the foreigners who want to reside in Albania for more than one year and intend to reside abroad for a period up to 3 months.*' An explanation was given by the Sector for the Foreigners and Passports officials who stated that this provision is interpreted only for foreigners who want to stay in Albania for more than one year in Albania. The following people are excluded from this obligation: persons under 16 years old; diplomats and other personnel of the foreign mission; and, unless otherwise ordered by the Minister of MoPO, religious persons; members of transport crews; and foreigners engaged with public institutions.

<sup>371</sup> Art. 77 of LoF defines as administrative contravention acts such as: a) use of visa, residence permit or other documents issued for other persons; b) submission of false information in the application made to enter Albania by the foreigner; c) violation of the deadlines by a foreigner; d) the foreigner does not possess a passport or any other identity document; e) Albanian nationals and foreigners shelter or support foreign citizens in breach of the Albanian legislation, do not report to migration authorities, or do not keep a register for the foreigners; f) carriers do not report the complete list of the crew and passengers to the migration authorities; g) the foreigner enters or leaves Albania in violation of the Legislation on Foreigners. See Arts. 2 and 3 of 28 November 2002 Framework Decision. Legislation on Foreigners.

<sup>372</sup> *Ibid.* The fine is from 10 000-20 000 Leks and is ordered by the police organs. See also Art. 29 of DCM No. 439/2000 and the Law on Administrative Contravention 7697/1993. Albanian legislation makes no distinction between the foreigner and the facilitator.

<sup>373</sup> In case of detaining foreigners, the State Police must inform the Chief of Commissariat of the number of detained foreigners, the place and date of detention, the presumed citizenship and ethnic group if possible, gender, and documents if available. For more information see MoPO Instruction 1382/2001 "On the procedures to be followed by State's Police to facilitate the Pre-Screening of Detained Foreigners".

<sup>374</sup> As envisaged by Arts. 297-298 of the Criminal Code.

<sup>375</sup> See Art. 66 LoF, Art. 3 DCM No. 439/2000, amended by DCM No. 532/2001 and para. 17 Joint Instruction 1460/2001.

<sup>376</sup> See Art. 74 LoF.

<sup>377</sup> Art. 76 LoF

that do not hold other documents apart from their travel document obliging them to carry it at all times and show it when requested. The lack of such an obligation renders the verification of the identity and situation of those foreigners extremely complicated.

Obligation of foreigners to present confirmation of residence to the competent authorities Article 3 of amended Decision 439/2000<sup>378</sup>, paragraph 17 of the Joint MoPO and MoFA Instruction on procedures of entry, stay and treatment of foreigners<sup>379</sup> and Article 74, last paragraph, of the LoF<sup>380</sup> are inconsistent regarding: a) cases in which a foreigner needs to present him/her self at the police commissariat for inspection and b) the timeframe for the fulfilment of that obligation.

## **(b) Gap Analysis between the Albanian Legislation and the EU acquis**

### **Verification of residence and employment situation before providing benefits by a public service**

There is a gap, as there are no provisions in the Law on Social Insurance or the Law on Health Insurance,<sup>381</sup> which provide an obligation for the State agencies to verify the legal status of residence or employment, prior to providing the benefits.

### **Checking illegal residence of foreigners**

There is a gap, as there are no mechanisms in the Albanian legislation to check a foreigner who is suspected of staying without authority or to check whether a foreigner who has been refused authorisation for residence has actually left. Furthermore, according to the Office for Foreigners in one local police commissariat, thirty days are usually given to a foreigner who resides in Albania without proper authorisation, to register at the police office and to apply for a residence permit.<sup>382</sup> This practice is not based on any provision in the Albanian legislation. Due to insufficient information, further analysis on the subject has not been possible.

### **Criminalizing the act of illegally assisting foreigners to enter, move and reside in Albania**

Although the Albanian Criminal Code establishes as criminal offences the illegal crossing of state borders and providing assistance for such illegal crossing by water, air or other means of transportation,<sup>383</sup> it does not contain similar provisions for illegal residence. Provisions on the falsification of documents and specifically passports, identity cards and visas are contained in the Criminal Code, yet there is no specific article on illegal residence comparable to the one on illegal crossing of borders.<sup>384</sup>

## **Recommendations**

### **Obligation of foreigners to present confirmation of residence to the competent authorities**

Inconsistencies between the different acts have to be removed and the appropriate references to relevant acts have to be included in the LoF.

### **Verification of residence and employment situation before providing benefits by a public service**

A provision and the corresponding mechanism should be put in place so that the competent public authorities verify the residence and employment situation of the foreigner and his or her family before providing benefits in the area of health, retirement, family or work.

### **The Criminal Code should be supplemented so as to include the facilitation of illegal residence as a criminal offence**

Even if to date the cases of illegal residence in Albania are few, the constituting of its facilitation as a criminal offence will have a preventive and dissuasive effect in the future when the number of illegal migrants attempting to reside for a longer term in the country will increase as a result of the progress of the integration process with EU.

<sup>378</sup> Art. 3 of DCM No. 439/2000, amended by DCM No. 532/2001 "To the police commissariats are to go those foreigners whose period of stay through the visa has elapsed and that want to extend the stay or ask to stay in the Republic of Albania more than three months, as well as those foreigners who enter without a visa and stay for more than thirty days. The appearance at the police structures in these cases is to be done no later than ten days before the termination of the period of validity."

<sup>379</sup> Para. 17 of Joint Instruction 1460/2001: "The foreign citizens who travel with simple passport and that will stay in the Republic of Albania more than twenty days, within these days should go to the local Police Commissariat for inspection. (...)"

<sup>380</sup> Art. 74 LoF: "(...) Every foreigner, besides the persons stipulated in paragraph 2 of Article 66 of this Law, must present themselves to the police for inspection. (...)"

<sup>381</sup> Law No. 7703, 11 May 1993; Law No. 7870, 13 October 1994.

<sup>382</sup> Information obtained from the Office for Foreigners, Police Commissariat in Durres, 19 August 2003.

<sup>383</sup> Art. 297, Art. 298, Criminal Code 7895/1995.

<sup>384</sup> See Arts. 186 and 189 of the Criminal Code.



## Asylum-seekers

The Criminal Code should explicitly exclude asylum seekers from criminal liability in cases of illegal crossing at the border.

## 6.2. Illegal Employment

Differentiation is made in the *acquis* between combating unauthorised entry and residence on the one hand, and measures to combat illegal employment and exploitation of third country nationals on the other.<sup>385</sup>

### EU *acquis*

- Employers must ensure that the situation of the people they recruit is in order by requiring them to present the necessary documents. They may also check directly with the competent authorities whether the future employee holds a residence and work permit.<sup>386</sup>
- The *acquis* states that the employment, facilitation or encouragement of employment of third-country nationals who do not possess the necessary authorisation to reside and work required by the Member State should give rise to criminal or administrative penalties according to national laws.<sup>387</sup>
- The penalty for individuals having promoted illegal trafficking in labour should constitute a criminal offence and should incur criminal and/ or administrative penalties.<sup>388</sup>
- Member States may expel persons working in breach of national provisions on employment of foreigners or related provisions. They may also expel people illegally employing foreigners or facilitating and harbouring illegal employment of foreigners.<sup>389</sup>
- The *acquis* places a lot of importance in enhancing collaboration between enforcement agencies of the Member States with the aim of combating illegal employment.<sup>390</sup>

### *Albanian Legislative and Institutional Framework*

The employment of a foreigner in Albania for a period of more than 3 months is subject to a prior request of a WP.<sup>391</sup> Upon obtaining a WP, foreigners are obliged to exercise the activity (s)he has been granted permission to undertake, an alternative activity is considered to be an administrative contravention.<sup>392</sup> The same applies for the foreigners who stay in Albania for a motive different from the one for which the visa or RP is issued.<sup>393</sup>

In order to fight illegal employment of the foreigners, the Albanian legislation also provides for obligations and measures against the employers who violate their legal obligations. Thus the employers who have employed foreigners against the dispositions of the Law on Foreigners may be obliged to pay the migration authorities for the expenses necessary to return employees to the country of origin.<sup>394</sup> Employers are obliged to register all hired employees at the local employment office.<sup>395</sup> Furthermore, the Criminal Code states that if the foreigners employed are not registered in the competent authorities or are not insured in accordance with the regulations, when a previous administrative measure has been rendered, it is sentenced with a fine<sup>396</sup> or imprisonment of the employer for a period up to one year.<sup>397</sup>

There is not any specific Authority dealing with the illegal employment of foreigners in Albania; as provided by the Law on Foreigners the violations of the legislation regarding the employment of foreigners are dealt with by the Labour State Inspectorate as other violations of the Labour Legislation in Albania.<sup>398</sup>

<sup>385</sup> See Recommendation of 27 September 1996 on combating the illegal employment of third-country nationals (hereinafter September 1996 Recommendation).

<sup>386</sup> See Art. 5 of 1995 Recommendation.

<sup>387</sup> See Section III, Arts. 1 and 2 of September 1996 Recommendation, and Article 6 of 1995 Recommendation.

<sup>388</sup> See Section III, Art. 3 of September 1996 Recommendation.

<sup>389</sup> Art. 2 of 1993 Recommendation.

<sup>390</sup> See Section IV of September 1996 Recommendation.

<sup>391</sup> See in this report- Section 2.2 Admission for Employment; See LoF, Art. 25.

<sup>392</sup> See Art. 77(11) of LoF; the procedures in case of administrative sanctioning are regulated by the Law on Administrative Contraventions No. 7697/1993.

<sup>393</sup> See Art. 77 of LoF.

<sup>394</sup> See Art. 81 of LoF.

<sup>395</sup> See Art. 22 of Law No. 7995/1995 'For the encouragement of Employment.' Art. 27 provides that for violation of obligations set by this Law, employers shall be subject to a fine up to 1000 000 Leks by the State Labours Inspectorate. The right of appeal is mentioned by Law No. 7986/1996 "On the State Labour Inspectorate."

<sup>396</sup> The fine is up to 10000 Leks, See Art. 170/a of the Criminal Code.

<sup>397</sup> See Art. 170/a of the Criminal Code.

<sup>398</sup> See Art. 45 of LoF. Violations are sanctioned based on the Law on the State Labour Inspectorate."

## **Responsible Institutions**

- The Directorate for Migration, MoOLSA and the employment offices are responsible for the issuance and renewal of the WP.
- State Labour Inspectorate<sup>399</sup> is the responsible organ assigned by law to control and impose sanctions for non-compliance with the employment legislation in general.<sup>400</sup>

## **Gap Analysis**

### **(a) Gap Analysis within the Albanian Legislation and the Implementation in Practice**

Not applicable.

### **(b) Gap Analysis between the Albanian Legislation and the EU acquis**

#### **Verification of the residence situation and of a working permit of foreigners by employers who wish to recruit them**

There is a gap as there are no provisions in the Albanian legislation obliging employers to verify the residence situation and the working permit of foreigners prior to employing them.

#### **Promotion of illegal trafficking in labour**

There is no provision in the Albanian Criminal Code establishing the promotion of illegal trafficking in labour as a criminal offence.

#### **Coordination and collaboration between enforcement agencies of states**

Due to insufficient information, no joint operations or other measures necessary to coordinate activities of the competent authorities with the aim of combating illegal employment and the exploitation of foreigners have been identified. The only exceptions are labour agreements with some neighbouring countries, such as Italy and Greece, concerning seasonal employment.<sup>401</sup>

#### **Obligation for notification / approval of changes**

The Albanian legislation on work permits does not establish the obligation of foreigners to notify to the competent authorities any changes to the information and conditions on the basis of which the work permit was granted. This greatly hinders the task of the police to ensure that foreigners only exercise the activities allowed by the specific type of work permit they hold and only do so for as long as the basic requirements for the possession of such a work permit are present. The lack of such an obligation to inform is incompatible with the basic requirement of the acquis, which states that Member States establish all necessary measures to effectively combat illegal employment. It would also be incompatible with the specific provision<sup>402</sup> for the same obligation, which is contained in the 2001 Proposal for a Directive on admission for employment and self-employment, (if and when adopted).

## **Recommendations**

### **Verification of the residence situation and of the working permit of foreigners by employers who wish to recruit them**

The obligation of the employer to ensure that the residence situation and working permit of the foreigner is legal, prior to employing him/her, should be established. The possibility and procedure for obtaining that information directly from the competent authorities could be foreseen.

### **Adoption of provisions for Promotion of illegal trafficking in labour**

The specific case of promotion of illegal trafficking in labour should be established in the LoF as a criminal offence with appropriate penalties.

### **Explicitly assigning of the task to combat the illegal employment of foreigners to the State Labour Inspectorate**

Law No. 7986/1995 on the State Labour Inspectorate should be supplemented, so as to explicitly assign to

<sup>399</sup> The State Labour Inspectorate is a public structure supervised and monitored by MoLSA. It is established and regulated by the Law on the State Labour Inspectorate. Around 100 inspectors perform their duties/inspections all over Albania (Information received by the Legal Department - State labour Inspectorate, MoLSA on 17 September 2003).

<sup>400</sup> Upon performing their inspection in legal/private entities, inspectors fill out the Inspections Act which includes a special part for the employment of the foreigners, their work permits etc.

<sup>401</sup> See Annotated Compendium Relating to the Albanian Legislation, State Structure and Policy on Emigration since 1990, published by the Albanian Centre for Parliamentary Studies in June 2002.

<sup>402</sup> Art. 9 of the 2001 Directive Proposal/Employment.

the State Labour Inspectorate, in parallel to the police, the task to control the implementation of the legislation on the employment of foreigners in Albania and to combat illegal employment.

### **Obligation for notification / approval of changes**

The LoF chapter on work permits should include a provision establishing that holders of work permits should notify to the competent authorities any changes relating to the information and conditions on the basis of which the work permit was granted, such as the identity of the employer, the type of contract, the kind of activities carried out as employed or self-employed and the level of financial resources. Changes of the type of contract or the type of activities should be subject to approval by the authorities.

## **6.3. Marriages of Convenience**

### **EU *acquis***

- The EU *acquis* definition of a marriage of convenience is a marriage concluded between a national of a Member State or a third-country national legally residing in the EU and a third-country national, with the sole aim of circumventing rules of entry and residence and obtaining authorisation to reside in the EU.<sup>403</sup>
- Checks on marriages with third-country nationals should be carried out only where there are well-founded suspicions and not systematically.<sup>404</sup>
- Where there are factors which support suspicions for believing that a marriage is one of convenience, the Member State should issue a residence permit to a third-country national on the basis of the marriage only after a check by the competent authorities that the marriage is not one of convenience and that the other conditions relating to entry and residence have been fulfilled. Such checking may involve a separate interview with each of the two spouses.<sup>405</sup>
- The residence permit granted on the basis of the third-country national's marriage should as a general rule be withdrawn or not renewed if the competent authorities find the marriage to be one of convenience. The third-country national should have an opportunity to contest or to have reviewed, as provided by national law, either before a court or a competent administrative authority, a decision to refuse or not renew a residence permit or authority to reside.<sup>406</sup>

### ***Albanian Legislative and Institutional Framework***

Foreigners married to Albanian Citizens or foreigners with a permanent residence in Albania have greater privileges than other foreigners, especially on the grounds of family reunification.<sup>407</sup> Albanian law<sup>408</sup> defines marriage as a legal cohabitation, founded on the moral and juridical equality of the spouses, in the mutual sentiment of love, respect and understanding, as the basis of unity in the family.<sup>409</sup> Marriages recognised in Albanian law are those concluded between a man and a woman who have reached 18 years of age.<sup>410</sup>

Although Albanian law does not define what a “marriage of convenience” is, the Family Code contains a provision against fake marriages in stating that a marriage is void if it is concluded without the intention of the spouses to have a joint life aslike husband and wife.<sup>411</sup> The Albanian legislation does not specifically provide what the consequences are of the annulment of a faulty marriage in relation to foreigners, but it stipulates that in general any decision or permission regarding foreigners may be annulled, when the reasons on which it was based cease to exist, or the conditions which made it possible change, or because of the presence of new factors that do not allow the entry or stay of a foreigner in Albania.<sup>412</sup> While, in relation to the issuance of the RP as a result of family reunification, the Albanian legislation specifically provides that family reunification shall not be considered as a motive to issue a RP to a foreigner if the marriage or adoption is done after an order of removal has been issued for the foreigner.<sup>413</sup>

### ***Responsible Institutions***

- The Civil Status Office carries out all the procedures related to the conclusion of a marriage and its registration.<sup>414</sup>

<sup>403</sup> See Arts. 1 and 2 of Resolution of 4 December 1997 on marriages of convenience.

<sup>404</sup> See preamble, *Ibid.*

<sup>405</sup> Art. 3, *Ibid.*

<sup>406</sup> See Arts. 4 and 5, *Ibid.*

<sup>407</sup> See in this report Section 4 “Family Reunification” for rights attained based on family reunification.

<sup>408</sup> See Family Code No. 9062, approved by parliament on May 8, 2003 and will come into effect in January 2004.

<sup>409</sup> Art. 1 of the Family Code.

<sup>410</sup> Art. 7 of the Family Code.

<sup>411</sup> Art. 36 of the Family Code.

<sup>412</sup> Art. 7 of the LoF.

<sup>413</sup> Art. 23(4) of LoF.

<sup>414</sup> See Family Code, Arts 8, 15, 28, 30 and Chapter V of Law No. 8950/2002 “On the Civil Status”.

- District Courts may declare marriages as invalid.<sup>415</sup>
- MoPO is the competent authority to issue and to withdraw residence permits as well as to order the removal of the foreigners from the territory of Albania.<sup>416</sup>

## Gap Analysis

### (a) Gap Analysis within the Albanian Legislation and the Implementation in Practice

Not applicable.

### (b) Gap Analysis between the Albanian Legislation and the EU *acquis*

Albanian legislation does not contain specific provisions concerning marriages of convenience. The general provisions of Article 7 and Article 23(4) LoF in combination with Article 36 of the Family Code<sup>417</sup> seem to be the only legal basis provided by the LoF for decisions and practice related to this issue.<sup>418</sup>

## Recommendations

### Adoption of legal provisions concerning marriages of convenience

Specific provisions based on the EU *acquis* and on Member State practice concerning marriages of convenience should be put in place to fill in the gap in the Albanian legislation.

### Training to detect marriages of convenience

Techniques of detecting marriages of convenience based on the best practice of EU Member States should be included in the training of immigration police.

## 6.4. Carriers Liability

### EU *acquis*

- Under the laws, regulations and administrative provisions of the Member States, carriers must ensure that third-country nationals who intend to enter Member States possess the necessary travel documents and, where appropriate, visas. Member States legislation should provide for dissuasive, effective and proportionate penalties for carriers that transport foreigners without the necessary documentation.<sup>419</sup>
- In case of breach of their obligation, the carriers should be responsible for:<sup>420</sup>
  - The immediate return of the foreigner or, if this is not possible, his/her transportation to a third state.
  - Covering expenses related to the stay and removal of the foreigner (if (s)he is not returned immediately by the same carrier).
  - Payment of a fine, the minimum amount of which should not be less than 3000 Euro for each person carried.
- The right of the carrier of defence and appeal against the sanctions should be ensured.<sup>421</sup>

### Albanian Legislative Framework

The need of an adequate legal framework for controlling the activities (such as organised trips, adoptions, commercial activities) that might favour clandestine emigration is acknowledged by Albania.<sup>422</sup> However, the issue of carrier liability in cases of illegal migration has not been extensively dealt with by a specific law. Limited provisions on the violation of the Legislation on the Foreigners by carriers are made reference to in a number of legal acts.

Thus the Law on Foreigners states that persons that enable the entry of a foreigner in Albania against the dispositions of the law are obliged to pay the expenses for the return of the foreigner in his/her country of

<sup>415</sup> See Family Code, Arts. 25-27 and Arts. 40-45.

<sup>416</sup> See in this report, Section 3.1 'Resident Permits'.

<sup>417</sup> See above in this section, The Albanian Legislation, No. 399-401.

<sup>418</sup> This gap is due to the fact that such form of irregular migration is not yet considered a concern by Albanian authorities.

<sup>419</sup> See Art. 26 of the Schengen Convention and Art. 4 of Council Directive No. 51 of 28 June 2001 supplementing the provisions of article 26 of the Schengen Convention (hereinafter Council Directive 51/2001).

<sup>420</sup> See Art. 26 of the Schengen Convention and Arts. 2, 3 and 4 of Council Directive 51/2001.

<sup>421</sup> See Art. 6 of Council Directive 51/2001.

<sup>422</sup> See the Draft of the "Action Plan for Improvement the Free Movement of the People" of 08/07/2003.

origin or in the country where (s)he is allowed to enter.<sup>423</sup> If the carrier<sup>424</sup> does not fulfil the obligation to pay the expenses within 6 months from the date of notification, (s)he shall not be given licence, and if (s)he already holds one, it will be withdrawn.<sup>425</sup> In addition, the travel company must take a foreigner back to his/her country of origin on its own expenses if (s)he is not allowed to enter Albania for grounded reasons.<sup>426</sup> The travel company shall, beside the expenditures, be subject to a fine if it has transported foreigners who are not allowed to enter Albania. This applies to previous cases as well.<sup>427</sup>

Carriers are obliged to present a complete and accurate list of the foreigners travelling with their company to the Ministry of Public Order; otherwise they will be held liable, and accordingly, subject to a fine for commitment of administrative contravention.<sup>428</sup>

### **Responsible Institutions**

- The Border Police, MoPO receives the list of passengers and the crew from the carriers. The chief of the respective BCP applies the fines for non-compliance with the obligation to prepare the list of passengers.<sup>429</sup>
- The MoTT is responsible for issuance and withdrawal of the licence of the carriers.<sup>430</sup>

### **Gap Analysis**

#### **(a) Gap Analysis within the Albanian Legislation and the Implementation in Practice**

Not applicable.

#### **(b) Gap Analysis between the Albanian Legislation and the EU *acquis***

##### **Obligation of the carrier**

The content of the obligation of carriers is not as clearly defined in the Albanian legislation as required by the EU *acquis*. Article 65 LoF does not specifically lay down that carriers are obliged to take all necessary measures in order to ensure that the foreigners they carry are in possession of all the necessary travel documents.

##### **Sanctions for the carriers**

The *acquis* obliges Member States to apply to carriers in breach of their obligations dissuasive, effective and appropriate sanctions. The Albanian legislation does not establish any such sanctions. Law No. 8772/2001 on the 'Guard and protection of the state border of Republic of Albania' lays down the possibility of imposing financial sanction to the carrier but limits it to cases of repeated transport of irregular migrants. The amount of the fine envisaged, on the other hand, is minimum compared to the one foreseen in the EU *acquis* and, therefore, cannot be considered either appropriate or dissuasive.

### **Recommendations**

#### **Clear definition of the carriers' obligation**

A clear definition of the obligation of carriers should be adopted, containing the elements of the *acquis* definition.

#### **Appropriate financial penalties**

Appropriate financial penalties for carriers transporting foreigners into Albania against the provisions of the law should be adopted.

#### **Training for the staff of Albanian transport companies**

Border Police should provide specialised training for the staff of Albanian transport companies focused on the obligations of the carriers. The possible involvement and the role of the Ministry of Transport and Telecommunication in this training should also be considered.

<sup>423</sup> See Art. 65 of LoF and Art. 81 of LoF. Expenses for the return of the foreigner include the travel expenses and administrative expenses related to the measures taken for removal or expulsion of the foreigners, the interpretation/translation costs, housing and food expenses as well as for other services. The carrier shall bear these expenses if it enabled the illegal entry of the foreigner into Albania.

<sup>424</sup> Referring either to the owner or to the administrator. See Art. 65 of LoF.

<sup>425</sup> Exemption is made for cases when the foreigner transported has been granted by Albanian authorities a RP or refugee status. See Art. 65 of LoF. See also the Law on Road Transport No. 8308/1998 as amended by Law No. 9096/2003 which regulates the issuance and withdrawal of licences for carriers and provides that the licence can be revoked in case of violation of the Albanian 'Legislation', without specifying the relevant 'legislation'.

<sup>426</sup> See Art. 37 of Law No. 8772/2001. This article does not provide which are the 'grounded reasons.'

<sup>427</sup> The fine is 10000-50000 Lek as provided by Art. 37(3) of Law No. 8772/2001.

<sup>428</sup> See Art. 77.13 of LoF. The fine imposed by the police organs will be from 10000 to 200000 Leks.

<sup>429</sup> See Art. 77 of LoF and Art. 29 of DCM No. 439/2000.

<sup>430</sup> See Art. 5 of the Law on Road Transport No. 8308/1998 as amended by Law No. 9096/2003.

## 7. Equal Treatment/Non-Discrimination

The right to equality before the law and protection against discrimination for all persons constitutes a universal right recognised by the Universal Declaration of Human Rights, the International Convention on the Elimination of all forms of Racial Discrimination, the United Nations Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms, to which all Member States are signatories. Articles 21 of the EU Charter of Fundamental Rights and 12 of the Treaty establishing the European Community prohibit discrimination on the grounds of nationality, racial, or ethnic origin.<sup>431</sup> The EU *acquis* explicitly lays down that the prohibition of discrimination should also apply to third-country nationals, further specifying that that does not cover differences of treatment based on nationality and stemming from the application of the provisions of entry and residence of third-country nationals and their access to employment.<sup>432</sup>

### EU *acquis*

- The *acquis* includes in its scope and defines both direct and indirect discrimination, an instruction to discriminate and also harassment.<sup>433</sup>
  - Direct discrimination is defined as occurring where one person is treated less favourably than another is, has been or would be treated in a comparable situation on grounds of racial or ethnic origin, religion, belief, disability, age or sexual orientation.
  - Indirect discrimination occurs when an apparently neutral provision, criterion or practice would put persons of a particular ethnic or racial origin or having a particular religion or belief, disability, age or sexual orientation at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.
  - Harassment is deemed to be discrimination when an unwanted conduct related to racial or ethnic origin, religion or belief, disability, age or sexual orientation takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment.
- *Acquis* provisions cover discrimination in employment and training, education, social protection (including security and healthcare), social advantages and the supply of, and access to, goods and services, including housing.<sup>434</sup>
- Member States should ensure for victims of discrimination access to appropriate channels of judicial and/or administrative redress and should impose effective sanctions to those who discriminate.<sup>435</sup>
- Member States are required to introduce into their legal systems the concept of protection against victimisation, meaning measures to protect individuals from any adverse treatment or adverse consequence as a reaction to a complaint or to proceedings aimed at enforcing compliance with the principle of equal treatment.<sup>436</sup>
- Member States are required to take measures to ensure that when persons who consider themselves discriminated establish before a court or other competent authority facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment.<sup>437</sup>
- A body or bodies for the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin should be designated. These bodies may form part of agencies charged at national level with the defence of human rights or the safeguard of individuals' rights. Its tasks should include:<sup>438</sup>
  - Providing independent assistance to the victims of discrimination in pursuing their complaints about discrimination.
  - Conducting independent surveys concerning discrimination.
  - Publishing independent reports and delivering recommendations on any issue related to discrimination.

<sup>431</sup> See preambles of Joint Action 443 of 15 July 1996 adopted by the Council on the basis of Article K.3 of the Treaty on European Union concerning action to combat racism and xenophobia, Council Directive 43 of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (hereinafter Council Directive 43/2000), and Council Directive 78 of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (Council Directive 78/2000).

<sup>432</sup> See para. 13 of preamble and Art. 3, para. 2 of Council Directive 43/2000 and para. 12 of preamble and Art. 3, para. 2 of Council Directive 78/2000.

<sup>433</sup> See Art. 2 of Council Directive 43/2000 and Art. 2 of Council Directive 78/2000.

<sup>434</sup> See Art. 3, para. 1 of Council Directive 43/2000 and Art. 3, para. 1 of Council Directive 78/2000.

<sup>435</sup> See Arts. 7, 8, 14 and 15 of Council Directive 43/2000 and Arts. 9, 10, 16 and 17 of Council Directive 78/2000.

<sup>436</sup> See Art. 9 of Council Directive 43/2000 and Art. 11 of Council Directive 78/2000.

<sup>437</sup> See Art. 8 of Council Directive 43/2000 and Art. 10 of Council Directive 78/2000.

<sup>438</sup> Art. 13 of Council Directive 43/2000. Although all EU Member States have institutions with remits in the field of anti-discrimination, until the end of 2002 only the institutions of Belgium, Finland, Ireland, the Netherlands, Sweden and the UK complied with the requirements of Directive 43/2000.

## ***Albanian Legislative Framework***

The Constitution of Albania states that fundamental rights and freedoms<sup>439</sup> contemplated by the Constitution for Albanian citizens shall be valid for foreigners and stateless persons in Albania, except when the citizenship is specifically required.<sup>440</sup> The Constitution also proclaims the principle of equality before the law and the principle of non-discrimination.<sup>441</sup> Thus no one may be unjustly discriminated against for reasons such as gender, race, religion, ethnicity, language, political, religious or philosophical beliefs, economic condition, education, social status or ancestry, if reasonable and objective legal grounds do not exist.<sup>442</sup>

In line with Constitutional provisions, the principle of non-discrimination is also emphasised by the Labour Code in respect of employment opportunities and treatment at work,<sup>443</sup> and the Code of Administrative Procedures in respect of relations of public administration with private persons.<sup>444</sup> In addition, the Criminal Code provides sentences with fines, or up to 5 years for state officials or public servants who upon carrying out their official duty create privileges or refuse legitimate rights to persons on the grounds of origin, sex, health, religions or political beliefs, trade union activity or on the ground of ethnicity, nationality, race or religion.<sup>445</sup>

In relation to integration, specific provisions exist only in respect of persons having obtained asylum and not for other categories of foreigners.<sup>446</sup>

### ***Responsible Institutions***

- There is not any specialised Governmental institution to deal with the integration/ discrimination against foreign persons who are not refugees in Albania. However, the People's Advocate deals with the complaints of persons for the violation of Human Rights in general, principle of non-discrimination included.<sup>447</sup>
- Many international and national non-governmental organisations operate in Albania for the protection of Human Rights and Freedoms and non-discrimination.<sup>448</sup>

---

<sup>439</sup> Albania has acceded to in the International Convention on the Elimination of all Forms of Racial Discrimination on 10th July 1994, has ratified the European Convention on Human Rights on 2.10.1996 and the Revised European Social Charter on 14 November 2002; it, and has signed Protocol No 12 of 2000 to the European Convention on Human Rights on 26 May 2003. Revised European Social Charter on 21.9.1998. See Chapter 2 of AC 'Fundamental Rights and Freedoms' which embodies and proclaims the ECHR principles.

<sup>440</sup> Art. 16 of CoA.

<sup>441</sup> See Art. 18 of CoA.

<sup>442</sup> Ibid.

<sup>443</sup> See Art. 9 of Labour Code.

<sup>444</sup> Art. 11(1) of Law No. 8485/1999 "On Administrative Procedures" provides that in its relations with private persons Public Administration will be governed by the principle of equality, which is no one shall be discriminated against on grounds of gender, race, religion, ethnicity, language, political, religious or philosophical beliefs, financial, educational, or social status or ancestry.

<sup>445</sup> See Art. 253 of the Criminal Code.

<sup>446</sup> See the Law on Integration and Family Union of Foreigners Granted Asylum in Albania, 2003.

<sup>447</sup> See Art. 2 of Law No. 8454 date 4.02.1999 "On the People's Advocate", amended by Law No. 860/2000.

<sup>448</sup> For example, Albanian Helsinki Committee, Albanian Group for the Protection of Human Rights, Albanian Centre for Human Rights etc.

## Gap Analysis

### (a) Gap Analysis within the Albanian Legislation and the Implementation in Practice

#### Definition of discrimination

The definition of discrimination contained in Article 9 of the Albanian Labour Code<sup>449</sup> lacks clarity and leaves room for improvement. The use of the words “distinction, exclusion and preference” instead of the more comprehensive term “treatment” unnecessarily limits prohibited discriminatory behaviour to these actions/results, leaving out other forms in which discrimination can be manifested. Moreover, the use of the phrase “that infringe upon an individual’s right to equal treatment” to define discriminatory distinctions, exclusions or preferences “rephrases” discrimination rather than actually defining what it consists of.

The phrases “distinctions, exclusions or preferences that are requirements for a specific position are not considered to be discriminatory. Special protective measures for employees provided under this code by a DCM or under collective contracts are not discriminatory” are too vague and arbitrary to be considered as laying down valid exceptions to the prohibition of discrimination. Any distinction, exclusion or preference cannot be considered non-discriminatory on the sole ground that it is a requirement for a specific position. Furthermore, the “protective measures” laid down in the code or in collective contracts cannot be *a priori* and with no further requirements declared non-discriminatory. The general legal principle that exceptions to such basic rights as non-discrimination can only take place when they are proportionate and objectively necessary to reach a legitimate aim does not seem to be reflected in this article.

#### Grounds of discrimination

Article 3 of Law No. 7952/1995 on the pre-university educational system establishes that “The citizens of the Republic of Albania have equal rights to be educated in all levels of education as defined by this law, despite social state, nationality, (...)”. Since this article only applies to citizens of Albania, the mention of nationality as a possible ground of discrimination does not seem consistent. If the rationale behind this reference is to explicitly prohibit discrimination in education of people having Albanian citizenship but different ethnic origin, the term nationality should be replaced by “ethnic origin”; otherwise it should be altogether removed.

### (b) Gap Analysis between the Albanian Legislation and the EU acquis

#### Protection against victimisation

There are no specific provisions in the Albanian legislation protecting individuals from suffering adverse consequences as a reaction to a complaint or to proceedings aimed at enforcing compliance with equal treatment. It is not sufficient simply to have anti-discrimination legislation; the victims should moreover be empowered to make use of such legislation without the fear of reprisals, otherwise legislation remains ineffective.

#### Burden of proof

It is not foreseen in the Albanian legislation that in cases of discrimination the burden of proof is born by the respondent.

#### Designated body for the promotion of equal treatment

The People’s Advocate defends the rights, freedoms and lawful interests of individuals from unlawful or improper actions or failures to act of the organs of public administration.<sup>450</sup> To date, no complaint concerning racial or ethnic discrimination has been admitted by this body.<sup>451</sup> The powers and mandate of the People’s Advocate do not fully comply with the tasks envisaged in the acquis for the body for the promotion of equal treatment. No specialised section for racial or ethnic discrimination exists within the Office of the People’s Advocate. Moreover, his powers to assist victims of discrimination do not include the possibility of actually bringing a case to court or representing the victims in court. His mandate does not include the conduct of research and surveys concerning discrimination, while his reports have to be presented to the Assembly and published by it.

<sup>449</sup> Art. 9 of the Labour Code: “1. Any kind of employment or professional discrimination is prohibited. 2. Discrimination means any distinction, exclusion or preference that is based on race, colour, sex, age, religion, political conviction, national origin, social origin, family relation or physical and mental handicap that infringe upon an individual’s right to equal treatment in employment. Distinctions, exclusions or preferences that are requirements for a specific position are not considered to be discriminatory. Special protective measures for employees provided under this code by a DCM or under collective contracts are not discriminatory. 3. Employment and profession refer to professional orientation and qualification, employment in various professions, and the terms and conditions relating to the distribution of work, job performance, remuneration, social assistance, discipline, or the termination of the labour code.”

<sup>450</sup> Art. 60 of CoA, Art. 2, the Law on People’s Advocate.

<sup>451</sup> Only two complaints were filed at the People’s Advocate by foreigners for claiming violations of their rights, but after being investigated by the officials of this body, they were found unbiased (information received by the People’s Advocate Office in October 2003).



## **Recommendations<sup>452</sup>**

### **Definition of discrimination**

The definition of discrimination in Article 9 of the Labour Code should be made clearer. The exceptions should be strictly limited to cases where they are absolutely and objectively necessary to achieve a specific legitimate aim that cannot be otherwise achieved and as long as they are objectively deemed as proportionate to that aim.

### **Forms and grounds of discrimination**

By combining the discrimination-related provisions of the Albanian legislation,<sup>453</sup> and those of the international instruments Albania has ratified,<sup>454</sup> it can be deduced that there is a legal basis for the prohibition of any kind of discrimination.<sup>455</sup> Nevertheless, for the sake of clarity it could be explicitly mentioned in the relevant articles that the prohibition of discrimination includes direct and indirect discrimination, an instruction to discriminate and also harassment. Moreover, the grounds of sexual orientation could be explicitly mentioned additionally to the grounds of sex.<sup>456</sup>

### **Protection against victimisation**

A system of protection against victimisation of people involved in the filing of a complaint or in prosecutions on discrimination grounds should be introduced into the Albanian legal system.

### **Burden of proof**

In compliance with the Directive but also taking into account how difficult it often is to provide proof of discriminatory conduct and how such difficulty may lead to the ineffectiveness of existing remedies, the principle of reversal of the burden of proof for discrimination cases should be introduced into the Albanian legislation.

### **Body for the promotion of equal treatment**

A specialised body for the promotion of equal treatment without discrimination based on racial and ethnic origin should be designated with the competencies to carry out the tasks laid down in Directive 43/2000. To satisfy both the requirements and the overall rationale of the Directive, the body has to present the following characteristics:

- Its independence should be guaranteed by statute and clear terms of reference determining its composition, areas of competence, statutory powers, accountability and funding.
- Its composition should reflect society at large and its diversity and ensure independence. A clause in the legislation should stipulate the length of term of the members and that their mandate cannot be arbitrarily withdrawn before the end of the term.
- Sufficient financial resources should be granted to it on the annual fiscal budget in order to ensure effectiveness, continuity and independence.
- It should be easily accessible to those whose rights it is intended to protect.<sup>457</sup>

## **8. Return and Removal**

The existence of a return policy relates to the wider EU policy of combating illegal migration.<sup>458</sup> The Commission has stated “the credibility and integrity of the legal immigration and asylum policies are at stake unless there is a Community return policy on illegal residents.”<sup>459</sup> The return policy for the Commu-

<sup>452</sup> These Recommendations are also in line with Recommendation No. 7 on “National Legislation to Combat Racism and Racial Discrimination” of the European Commission against Racism and Intolerance (ECRI) adopted on 13 December 2002.

<sup>453</sup> Arts. 16 and 18 of CoA, Art. 3 LoF, Art. 9 of the Labour Code, Art. 3 of Law No. 7952/1995 ‘On the pre-university educational system’ and Art. 11 of the Administrative Procedures Code.

<sup>454</sup> The International Convention on the Elimination of all forms of Racial Discrimination, the United Nations Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms

<sup>455</sup> The obligation to “respect” and “ensure” the rights recognised in the ICCPR without distinctions of any kind is interpreted as a both positive (“ensure”) and negative (“respect”) obligation to uphold the rights provided in the Covenant. See *Bhinder v. Canada* (Communication No. 208/1986) in which the Human Rights Committee noted de facto discrimination within the concept of discrimination under the ICCPR.

<sup>456</sup> Please note that the Human Rights Committee has established that sexual orientation is covered by “sex” (*Toonen v. Australia*, Communication No. 488/1992).

<sup>457</sup> For more detailed information and recommendations on the structure, remit and mandate for the body required by Directive 43/2000 refer to the May 2002 “Final Report on Specialised Bodies to Promote Equality and/or Combat Discrimination” commissioned by the European Commission in the framework of the Community Action Programme to combat discrimination (2001-2006) on [http://europa.eu.int/comm/employment\\_social/fundamri/2002/equality\\_bodies\\_en.html](http://europa.eu.int/comm/employment_social/fundamri/2002/equality_bodies_en.html), to Recommendation No. 2 on “Specialised Bodies to Combat Racism, Xenophobia, Anti-Semitism and Intolerance at National Level” of the European Commission against Racism and Intolerance (ECRI) adopted on 13 June 1997 and also to the European Network Against Racism (ENAR) web page on <http://www.enar-eu.org>

<sup>458</sup> Communication from the Commission to the Council and the European Parliament on a Common Policy on Illegal Immigration” (COM 672/2001).

<sup>459</sup> Communication from the Commission to the Council and the European Parliament in view of the European Council in Thessaloniki on the development of a Common Policy on Illegal immigration, smuggling, and trafficking of human beings, external borders, and the return of illegal residents (COM 323/2003).

nity is under development following the elaboration of the EC Green Paper on a Community Return Policy on Illegal Migrants,<sup>460</sup> the Commission Communication on a Community Return Policy on Illegal Residents of October 2002, and the adoption, in November 2002, of a Return Action Programme. As the return policy is in its nascent phase, the Commission is currently developing a number of proposals, including a proposal for a Council Directive on minimum standards for return procedures and mutual recognition of return.<sup>461</sup> Furthermore, the development of a return policy is increasingly linked to fostering relations with third countries.<sup>462</sup> In particular, the Commission has communicated the importance of the development of integrated country-specific return programmes to be designed to ensure effective, timely and – above all – sustainable return, including reasonable assistance to returnees and capacity building to the country of origin.<sup>463</sup>

It should be stressed that Member States have different terminologies, systems and practices with regard to return issues and, therefore, no harmonised EU definitions of return related terms exist in the *acquis*. To facilitate understanding of this Section of the Report, the indicative and non-binding definitions laid down in Communication 564/2002 and in the 2002 Council Return Action Programme have been quoted under each subsection.<sup>464</sup>

## 8.1. Expulsion

The underlying principles of the EU *acquis* concerning expulsion relate to the speed, efficiency, effectiveness, and economy of facilitating expulsion.<sup>465</sup> However, at the same time expulsion procedures are required to be fully consistent with the obligations of the country under the relevant international instruments in the fields of asylum and human rights.<sup>466</sup>

### EU *acquis*

- According to the indicative definitions contained in the 2002 Return Action Programme:<sup>467</sup>
  - Forced return is: “The compulsory return to the country of origin, transit or another third country, on the basis of an administrative or judicial act.”
  - Expulsion is: “The administrative or judicial act, which states- where applicable- the illegality of the entry, stay or residence or terminates the legality of a previous lawful residence e.g. in case of criminal offences.”
  - An expulsion order is: “The administrative or judicial decision to lay the legal basis for the expulsion.”
  - Removal is: “The act of enforcement, which means the physical transportation out of the country.” The word deportation is also used in this context.
  - A removal order is: “The administrative or judicial decision to lay the legal basis for the removal.” In certain legal systems the terms “expulsion order” and “removal order” are synonymous.
- Foreigners are required to leave the territory of the Schengen Contracting Parties, in accordance with national law, when they:<sup>468</sup>
  - Fail to comply with national rules on entry and residence of aliens<sup>469</sup> or
  - Are liable to expulsion on grounds of public order or national security and safety.<sup>470</sup>
- Foreigners should be removed from the territory of the Schengen Contracting Parties, in accordance with national law, when:<sup>471</sup>
  - They have not left voluntarily or it may be assumed that they will not do so

<sup>460</sup> COM 175/2002.

<sup>461</sup> COM 323/2003.

<sup>462</sup> Communication from the Commission to the Council and Parliament “Integrating Migration Issues in EU relations with third Countries” (COM 703/2002).

<sup>463</sup> COM 323/2003.

<sup>464</sup> See Chapter 2(2)(1) and Annex of Communication 564/2002 on a Community Return Policy on Illegal Residents (COM 564/2002) and Annex 1 of the Council Return Action Programme of November 2002.

<sup>465</sup> As outlined in Recommendation of 30 November 1992 regarding practices followed by Member States on expulsion (hereinafter 1992 Recommendation).

<sup>466</sup> Namely the 1951 Geneva Convention relating to the status of refugees, the 1967 New York Protocol and the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocol No 4 of 1963. See Art. 23(5), Schengen Convention.

<sup>467</sup> See Annex of COM 564/2002 and Annex 1 of the Council Return Action Programme of November 2002. It should be noted that the Council Return Action Programme does not contain a definition “forced removal”.

<sup>468</sup> See Art. 23, para. 1 of the Schengen Convention, Art. 3, Council Directive 2001/ 40/ EC on the mutual recognition of decisions on the expulsion of third country nationals (hereinafter Council Directive 40/2001), Section I, para. 1 of 1992 Recommendation and Art. 2 of 1993 Recommendation.

<sup>469</sup> This category includes both foreigners who have entered or remained unlawfully in Member States (where their stay has not been regularised) and foreigners who have been involved in the facilitation, harbouring or employment of illegal immigrants.

<sup>470</sup> What constitutes a threat to public order or to national security and safety is elaborated within Art. 3 of Council Directive 40/2001, as follows: Conviction of a third country national by the issuing Member State for an offence punishable by a penalty involving deprivation of liberty of at least one year, The existence of serious grounds for believing that a third country national has committed serious criminal offences or the existence of solid evidence of his intention to commit such offences within the territory of a Member State.

<sup>471</sup> See Art. 23, para. 3 of the Schengen Convention.

- Their immediate departure is required for reasons of national security or public policy.
- People being expelled should be appropriately notified of the reasons for the decision, unless there are interests of national security for not doing so. National provisions should also clearly lay down the right of the foreigner to be represented and to challenge the expulsion decision and the procedure for doing so. The possibility to provide an interpreter where necessary should be foreseen.<sup>472</sup>
- National legislation should provide the possibility to restrict the personal liberty of people liable to expulsion in appropriate circumstances and only for the time needed to effect expulsion. Appropriate places of custody should be available, where possible separate from prisoners. People in custody should have reasonable access to legal advisers.<sup>473</sup>
- Any necessary arrangements for the identification and documentation of the foreigner to be expelled should be made at the earliest possible opportunity. National legislation should allow the fingerprinting of those to be expelled. Strong consular cooperation mechanisms should exist in order to facilitate the rapid procurement of the necessary documentation.<sup>474</sup>
- The *acquis* foresees a standard travel document to be used by all Member States in the case of foreigners being expelled from the territory of the EU.<sup>475</sup>
- The *acquis* states that expulsion should take place with due respect for human rights and fundamental freedoms.<sup>476</sup>

### ***Albanian Legislative and Institutional Framework***

The Constitution of Albania prohibits the collective expulsion of foreigners and states that expulsion of individuals is permitted only under conditions specified by law.<sup>477</sup> The legislation on foreigners does not define the removal *per se* but it defines that a removal order is an order for the removal of the foreigner out of the Albanian territory because his/her stay is illegal.<sup>478</sup> The terms 'expulsion' or 'forced removal' are defined as the set of measures taken by police authorities for carrying out a mandatory removal of the foreigner.<sup>479</sup>

#### **(a) Removal**

The Albanian Legislation provides that the removal out of the territory of Albania is done by a removal order when:<sup>480</sup>

1. There is a final court decision.
2. The visa is rejected.
3. The visa validity and stay term are over.
4. The validity of the RP is rejected or has expired.

#### **(b) Expulsion/ forced removal**

While forced removal is done only by order of special authorities of the MoPO when:<sup>481</sup>

1. The foreigner has not left or there are well founded doubts that he will not leave Albania in compliance with the legal dispositions in force.
2. Has entered or stays illegally in Albania.
3. Is expelled by another state and is readmitted by Albanian authorities based on international obligations or agreements.

Foreigners who have resided in Albania for an extended period of time, or are family members of an Albanian citizen or foreigner with a permanent residence,<sup>482</sup> can be removed from Albania only by an order from the Minister of Public Order.<sup>483</sup> Likewise, recognised refugees, or those whose life is threatened if sent in the country of origin, cannot be expelled from Albania.<sup>484</sup>

<sup>472</sup> See Section I, para. 5, 6 and 7 of 1992 Recommendation and Art. 4 Council Directive 40/2001.

<sup>473</sup> See Section II of 1992 Recommendation and Chapter 2(3)(5) of COM 564/2002.

<sup>474</sup> See Section III of 1992 Recommendation and Recommendation of 22 December 1995 on concerted action and cooperation in carrying out expulsion measures.

<sup>475</sup> See Recommendation of 30 November 1994 concerning the adoption of a standard travel document for the removal/expulsion of third-country nationals.

<sup>476</sup> See Art. 3(2) of Council Directive 2001/ 40/ EC on the mutual recognition of decisions on the expulsion of third country nationals and Chapters 1, 2.3, 2.3.2 and 2.3.3 of Communication 564/2002 on a Community Return Policy on Illegal Residents.

<sup>477</sup> See Art. 39(2) and (3) of CoA.

<sup>478</sup> See Art. 2 of LoF.

<sup>479</sup> See Art. 2 of LoF. October Draft Amendment on LoF proposed by MoPO abrogated the definition of 'expulsion' and 'removal'.

<sup>480</sup> See Art.46 of LoF.

<sup>481</sup> See Art.47 of LoF.

<sup>482</sup> Art. 50 of LoF states that can not be expelled without prior order of Minister of Public Order the following categories of foreigners: 1) Foreigners who have been resident in Albania since the age of 6 years old; 2) have a permanent residence permit; 3) are family members of Albanian citizens or permanent residents and have cohabited for at least one year; 4) have worked and lived in Albania for over 5 years; 5) are work invalid; 6) are refugees.

<sup>483</sup> See Art. 50. Ibid.

<sup>484</sup> See Arts. 49 and 50 of LoF.

The execution of the removal order<sup>485</sup> can be postponed until all the travel documents have been prepared and the complaint procedures foreseen by law, if the foreigner has lodged a complaint, have been exhausted.<sup>486</sup> However, the execution of a removal order cannot be postponed for more than 45 days unless by a court decision.<sup>487</sup> On the other hand, for reasons of state and public security, the execution of the order may be immediate.<sup>488</sup> The Minister of Public Order can order an advanced execution of the removal order when the stay of the foreigner in Albania is considered an immediate danger for Albania.<sup>489</sup> Foreigners have the right to appeal<sup>490</sup> if the immediate execution of the removal order constitutes a violation of International Agreements or Conventions.<sup>491</sup>

The foreigner can be removed to either the country (s)he has come from, his/her country of birth or residence, or in any other country that admits him/her.<sup>492</sup> The Albanian Legislation states that pending the procedures for removal or expulsion, foreigners must be accommodated in the reception centres established for those foreigners who are not asylum seekers.<sup>493</sup>

### **Responsible Institutions**

- The Public Order Police, within MoPO is responsible for issuing and implementing expulsion orders for foreigners.<sup>494</sup>
- The Minister of Public Order, MoPO is the only authority for ordering the removal of special categories of foreigners and for the advanced execution of the removal order.<sup>495</sup>
- The General Directorate of the Border Police is responsible for management and for the proper functioning of reception centres for the temporary treatment of foreigners who are not asylum seekers.<sup>496</sup>

### **Gap Analysis**

#### **(a) Gap Analysis within the Albanian Legislation and the Implementation in Practice**

##### **Inconsistent terminology**

In the LoF the terms “expulsion”, “removal”, “expulsion order”, “removal order” and “forced removal” are used indiscriminately. Although as mentioned before in certain legal systems “expulsion order” and “removal order” can be synonymous, the indiscriminate use of all those terms under the same provision or in the same definition causes confusion. Furthermore, the terms “removal” and “expulsion” cannot be used as synonymous because expulsion is an administrative or judicial act while removal is an act of enforcement and refers specifically to the physical transportation out of the country.<sup>497</sup> As a result, it is not clear in the LoF how these terms are related and which applies in each case.

##### **Immediate /advanced/ execution of the removal order**

Article 52 of the LoF envisages the “immediate” and “advance” executions of a removal order. It is not clear whether the two terms are used with one and the same meaning. Taking into account that the right to defence is a fundamental right, the execution of the removal order before the expiring of the term for appeal (immediate execution) can be justified only as an exception, when the presence of the foreigner is an imminent serious threat for the national security or the public order. In this respect the numerous motives stated in Article 52, points 3-9 of the LoF can be interpreted as reasons for detaining the irregular

<sup>485</sup> See Art. 54 of LoF. The removal order determines the deadline for the removal of the foreigner out of Albania; timeframe within which the foreigner is forbidden to enter Albania by putting a note in the passport; the BCP where (s)he has to pass; immediate execution authorisation; and the authorisation to take the fingerprints.

<sup>486</sup> See Arts. 48 and 56 of LoF. The foreigners may lodge administrative or judicial complaint against the removal order. Judicial complaint can be lodged by foreigners legally staying in Albania for not less than one year, within 8 days after the last administrative decision has been rendered. The foreigners whose removal order is issued by the Minister of MoPO on grounds of Art. 4 of LoF can appeal in the court only for the country of destination.

<sup>487</sup> Art. 51 of LoF.

<sup>488</sup> Art. 52 of LoF.

<sup>489</sup> Ibid.

<sup>490</sup> Ibid. The appeal must be lodged within 3 days and shall be examined within 8 days by the date it was lodged by the respective authority at MoPO.

<sup>491</sup> Art. 52 of LoF.

<sup>492</sup> Art. 48 of LoF.

<sup>493</sup> See Art. 5 Law No. 8772/2001 and Decision 46 date 07/02/2002 “For the approval of the regulation “On the functioning of all reception centres and temporary treatment of the foreigners who are not asylum seekers”; see Arts. 7-17.

<sup>494</sup> See Arts. 46; 47; and 50 of LoF.

<sup>495</sup> Supra, no. 482. See also Art. 52 of LoF.

<sup>496</sup> See Art. 3 of DCM No. 46/2002.

<sup>497</sup> The October 2003 draft of the MoPO amendments to the LoF abrogates the definitions of “expulsion” and “forced removal or banishment” and lays down a new definition for “forced removal or expulsion”. These amendments do not appear at all in the October version of the amendments. It is not clear whether this omission can be interpreted to mean that they have been definitely rejected or that they remain unchanged and valid. In any case they are neither consistent with the indicative *acquis* definitions nor help clarify the relevant provisions of the LoF. Moreover, they are not accompanied by the necessary relevant changes in Chapter V of the LoF.

migrant in the specialised centres but not for expulsion without an objective possibility to appeal.

#### **Notification of removal order**

Points 27 and 28 of Decision 439/2000 mention the notification of the removal order to the foreigner but the procedure and the form of such notification are not contained either in that provision or in the relevant articles of the LoF.

#### **Fragmented regulation of administrative appeal**

The administrative review of the removal decision is partly regulated in Article 56 LoF and partly in point 28 of Decision 439/2000. Such a fragmented regulation of the right of defence and, furthermore, the lack of an appropriate reference in the LoF to the provision of the decision create confusion and lack of clarity regarding appeal procedures.

### **(b) Gap Analysis between the Albanian legislation and the EU *acquis***

#### **Grounds for expulsion/removal**

The grounds for expulsion/removal in the LoF are unclear, overlapping and contradictory to the *acquis*. There is no clear enumeration of the cases leading to these administrative measures. The grounds for refusal of visa, entry and RP listed in Article 4 LoF can be defined generally as related to national security and public order but they are not established as grounds for expulsion. At the same time, Article 46, point 2 stipulates that a removal order should be issued if the visa is rejected. This case is meaningless since the foreigner would not be allowed to enter Albania. Moreover, there is overlapping between Articles 46 and 47 LoF, since they both include cases in which the foreigner may be illegally residing in Albania.

#### **Permanent residents**

As mentioned above, Article 52 of the LoF does not prohibit immediate execution of removal orders in cases when the foreigner is a permanent resident, which is contradictory to the EU *acquis*.

#### **Right of defence in case of expulsion**

The LoF does not foresee explicitly the right of an interpreter, if the foreigner does not understand the Albanian language, and the right of legal representation and counselling. As a result, the foreigner, subject of a removal order, may not be able to defend him/herself effectively.

#### **Restriction of personal liberty**

Article 75 LoF provides the possibility to place asylum-seekers in transit centres under certain circumstances but only provides the possibility of forced accompaniment for non asylum-seekers. This article is not only incoherent, since it regulates the possible placement of asylum seekers in transit centres under the title of "forced accompaniment", but also leaves a gap regarding the possibility to also restrict, when needed, the liberty of non asylum seekers.

#### **Detention centres**

Although detention centres for foreigners who are not asylum seekers are envisaged in the Albanian legislation,<sup>498</sup> none have been created to date. The lack of such facilities hampers the efficient functioning of the system of the removal of a foreigner in an irregular situation. It can also be considered as a serious impediment for the implementation of the readmission agreement concerning third-country nationals.

### **Recommendations**

#### **Clear terminology**

The terminology contained in the LoF and in secondary legislation with regard to return should be revised. The indicative definitions of the 2002 Return Action Programme can be used for reference.

#### **Notification of removal order**

The procedure and form of notification of removal decisions should be laid down in the LoF or the reference to the relevant secondary act containing such information should be included in the LoF.

#### **Grounds for removal/expulsion**

All grounds for removal/expulsion should be clearly, exhaustively and in line with the *acquis* listed in the LoF.

#### **Immediate /advanced/ execution of the removal order**

The grounds for immediate execution of expulsion orders should be clearly and exhaustively listed in the

LoF. They should be based only on the protection against real and serious threats for national security and public order. Permanent residents should be excluded.

### **Right of defence in case of expulsion**

The procedure for administrative appeal should be clearly and completely regulated in the LoF. The possibility to have an interpreter when needed should be foreseen.

### **Permanent residents**

The LoF should be amended in order to state explicitly that the immediate execution of the expulsion order for permanent residents is prohibited. The latter should enjoy the maximum legal protection against removal decisions.

### **Restriction of personal liberty and detention centres**

There should be provisions in the LoF establishing the possibility to restrict, in cases of lack of documentation or as a preventive measure and for the time necessary, the personal liberty of non-asylum seekers by placing them in appropriate detention centres. Such centres should be established as soon as possible, also considering that there already exists legislation on their establishment. They should have a proper legal status clearly distinguishing them from prison institutions and they should be equipped with facilities that guarantee accommodation and hygiene conditions respecting human dignity. They should allow those detained there to exercise their basic rights of contact with interpreters, visitation and access to health care.

## **9. Readmission**

Co-operation with third countries is a *sine qua non* for the success of immigration policy. The conclusion of readmission agreements with countries of origin and transit of irregular migrants are an essential instrument in this area, since the obligation of a state to readmit its own expelled nationals, stateless persons or third-country nationals, where required, is the correlate of the states' right to expel foreigners. If there exists no obligation of any state to readmit a foreigner who does not comply with the rules of entry and/or residence of the country (s)he is in, the right of that country to expel him/her loses its practical importance. One of the main developments in the EU readmission policy is the move from bilateral agreements to multilateral ones signed by the European Community.

### **EU *acquis***

- According to the indicative definitions of the 2002 Council Return Action Programme:<sup>499</sup>
  - Readmission is: "The act by a state accepting the re-entry of an individual (own individuals, third-country nationals or stateless persons), who has been found illegally entering, being present in, or residing in another state."
  - A readmission agreement is an: "Agreement setting out the reciprocal obligations on the contracting parties, as well as detailed administrative and operational procedures, to facilitate the return and transit of persons who do not, or no longer, fulfil the conditions of entry to, presence in or residence in the requesting state."
- A specimen bilateral agreement to be used as a basis for negotiations between Member States and third countries was adopted by the Council in 1994.<sup>500</sup> In 1995, guiding principles for the drafting of protocols on the implementation of readmission agreements were also adopted by the Council.<sup>501</sup> The changes that have occurred in the EU since 1994, such as the entrance into force of the Amsterdam Treaty and the shift from bilateral readmission agreements to more sophisticated and detailed multilateral EC ones, have minimised the practical importance of these instruments. Yet, they still form part of the "soft" readmission *acquis* and they can be considered to contain the minimum essential elements to be included in any readmission agreement.
- To address problems that have arisen in practice when applying readmission agreements, notably with the means of proof establishing the illegal residence in or transit through the territory of the requested state by foreign nationals, the Parties to the Schengen Convention laid down a list of the documents which may be deemed to provide proof of residence or transit. When one of these documents exists, in principle, no further investigation is carried out. The Parties have also laid down the indicative evidence by which a presumption of residence or transit may be established.<sup>502</sup>

<sup>499</sup> See Annex 1 of the Council Return Action Programme of November 2002.

<sup>500</sup> Recommendation of 30 November 1994 concerning a specimen bilateral readmission agreement between a Member State of the European Union and a third country.

<sup>501</sup> Recommendation of 24 July 1995 on the Principles for the Drafting of Protocols on the Implementation of Readmission Agreements.

<sup>502</sup> See Decision of the Executive Committee of 15 December 1997 on the guiding principles for means of proof and indicative evidence within the framework of readmission agreements between Schengen States.

- According to the two 2000 Protocols of the UN Convention against Transnational Crime, which form part of the EU acquis, each State Party is obliged to facilitate and accept without undue delay the return of smuggled people who are its nationals or who have the right of permanent residence in its territory at the time of return and also the return of trafficked people who are its nationals or had the right of permanent residence at the time of entry into the territory of the receiving State Party. In the case of smuggled people, each State Party should also consider the possibility of accepting the return of smuggled persons who had the right of permanent residence at the time of entry into the territory of the receiving State Party. At the request of the receiving State Party and without undue delay, the requested State Party should carry out the appropriate verifications and provide the necessary documentation for the return. The return should be carried out with due regard for the safety and dignity of the returnees.

### ***Albanian Legislative and Institutional Framework***

The readmission of Albanian and foreign citizens is performed based on the bilateral and multilateral agreements concluded by Albania. The Albanian legislation provides that based on readmission agreements, Albania shall readmit foreigners' expelled by other States, who departed or transited from Albania.<sup>503</sup> A foreigner accepted by Albania on the basis of readmission agreements can also be expelled by Albania to the country of origin or residence.<sup>504</sup> At the time this report was written, Albania had signed nine readmission agreements, while eleven others were in the process of negotiation.<sup>505</sup> Albania has also started the process for negotiation of the agreement with the EU.<sup>506</sup> Moreover, it has been State Party to the UN Convention against Transnational Crime and its two 2000 Protocols since 21<sup>st</sup> August 2002.

### ***Responsible Institutions***

- MFA participates in the negotiation process of readmission agreements.
- The Sector for Border Checkpoints, within the General Directorate of Border Police, (MoPO) is responsible for the implementation of the readmission agreements.<sup>507</sup>
- The Sector for Passports and Foreigners within Central Directorate of Public Order Police, MoPO is responsible for implementation of the Readmission Agreement with Switzerland, which is the exception from the rule, because this was stipulated by the Protocol for Implementation.<sup>508</sup>

### **Gap Analysis**

#### **(a) Gap Analysis within the Albanian Legislation and the Implementation in Practice**

Not applicable.

#### **(b) Gap Analysis between the Albanian Legislation and the EU acquis**

##### **Readmission agreements**

Albania does not have readmission agreements with several states considered as main countries of origin and/or transit of illegal migrants, and particularly not with neighbouring countries.<sup>509</sup>

##### **Readmission of third-country nationals**

The readmission agreement between Albania and Germany does not contain a clause about readmitting third-country nationals.

##### **Protocols of the UN Convention against Transnational Crime**

Due to lack of sufficient information, the level of implementation of the articles on return contained in the two Protocols could not be ascertained.

<sup>503</sup> See Art. 11 of LoF.

<sup>504</sup> See Art. 47(3) of LoF.

<sup>505</sup> According to information obtained from MoPO and MoFA, Albania has signed readmission agreements with Italy (1997), Switzerland (2000), Belgium (2001), Hungary (2001), Bulgaria (2002), Germany (2002), Romania (2002) and Croatia (2003). It is currently negotiating a readmission agreement with the European Community, which, once into force, will take precedence over all bilateral agreements between Albania and Member States (Denmark will not be party to the EC agreement). An agreement has been signed with the UK and is currently in the ratification stage. Negotiations are underway with Moldova, FYROM, Slovenia, Czech Republic, Poland, BiH, Slovakia, Luxembourg, France and the Netherlands.

<sup>506</sup> According to MoFA no real problems that could block the negotiations have existed so far (information obtained in August 21, 2003). The first round of talks was held in May 2003; the second was scheduled to be held in September 2003 and the final one on November 5, 2003.

<sup>507</sup> Information received by the meeting held on July 17, 2003 with Representatives of the General Directorate of Border Police.

<sup>508</sup> The plan is to transfer this activity to the Office for Foreigners, Sector for Passports and Foreigners within the Central Directorate of Public Order Police, MoPO. This information was given by the Sector for Passport and Foreigners on July 16, 2003.

<sup>509</sup> Supra, no. 5074

## **General overview**

Although the exact figures (statistics) cannot be ascertained due to insufficient information, it can be considered that the implementation record of Albania on the readmission is low. This is mostly due to the lack of appropriate institutional capacity and infrastructure (experience and expertise in the field of readmission, detention centres for irregular migrants and readmitted third-country nationals) as well as to the lack of readmission agreements with the main countries of origin.

## **Recommendations**

### **Readmission agreements with third States**

The Albanian Government should start negotiations and to sign readmission agreements with the third States considered as main countries of origin and/or transit of illegal migrants. For that end the capacity of the authorities entitled to negotiate (the MoFA, the MoPO) and to implement (the MoPO) readmission agreements should be enhanced.

### **Minimum content of readmission agreements with third States**

Readmission agreements signed between Albania and third countries should as a minimum:

- Lay down the mutual obligation to readmit not only own nationals being unlawfully present in the territory of the requesting state but also third-country nationals and stateless persons who have either entered into the territory of the requesting State after having stayed on or transited through the requested State, or hold a valid visa or residence permit issued by the requested state.
- Clearly stipulate that a loss of nationality which occurs in the requesting State due to renunciation or withdrawal does not affect in any way the obligation of the requested State to readmit, unless there has been a promise on the part of the requesting State to naturalise the third-country national concerned.
- Clearly stipulate that the obligation to readmit does not apply or expires if the requesting State has granted or grants to the stateless person or third-country national a visa or residence permit. That case should not apply if the stateless person or third-country national is found to be in possession of a visa or residence permit issued by the requested country which has a longer period of validity. It should not apply either if the visa or residence permit issued by the requesting State has been obtained using forged or falsified documents.
- Clearly stipulate that the readmission of a person of another jurisdiction will not be requested if the person concerned has applied for asylum in the requesting State, for as long as a final decision on the merits of the application has not been reached, unless an agreement on the allocation of responsibility for examining an asylum application is in force between the requesting and the requested States.
- Clearly state the documents required as means of evidence regarding nationality and also regarding the fulfilment of the conditions for the readmission of third-country nationals and stateless persons. The evidence by which a presumption of nationality and also a presumption of the fulfilment of the conditions for the readmission of third-country nationals and stateless persons may be established should also be defined.
- Lay down clear procedures and timeframes for the implementation of the readmission, including regulation of transit and the covering of costs.
- Contain a clause on data protection.
- Contain a clause ensuring respect for the principle of non-refoulement.
- Contain a clause stipulating that the agreement is without prejudice to the rights, obligations and responsibilities of the Parties arising from International Law such as the 1951 Convention on the Status of Refugees and the 1967 Protocol, the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms, and the International Covenant on Civil and Political Rights.

### **Protocols of the UN Convention against Transnational Crime**

The level of implementation of these Protocols in Albania has to be ascertained so as to identify the possible shortcomings and proceed with putting in place the appropriate legislation and mechanisms needed to guarantee the fulfilment of obligations on part of Albania under the Protocols.

### **Institutional capacity and infrastructure**

The gaps in the institutional capacity and infrastructure of Albania with regard to the proper implementation of existing and future readmission agreements should be addressed. The proper detention facilities should be put in place as soon as possible. Training should be envisaged for the authorities involved in the negotiation and implementation of readmission agreements, including workshops and study visits to share best practices and experience, language training, creation of manuals and templates to facilitate the day-to-day implementation by the competent authorities and the putting in place of mechanisms for the reintegration of returning Albanian nationals.



## 10. Migration Data

### 10.1. Data collection and exchange

The EU has repeatedly acknowledged that availability of comparable information and statistics is of crucial importance for the effective management, monitoring and evaluation of immigration policy. Information about migration flows and patterns of migration, including illegal immigration, the role of migrants in the labour market and the overall impact of migration (including its social, cultural and political aspects) permits concerted action by EU Member States but also more effective cooperation with countries of origin and transit. Several common information systems and cooperation programmes are already functioning in the EU, yet it is constantly stressed that further efforts to improve the comparability of migration statistics and to support comparative research on migration should be continued.<sup>510</sup>

#### EU *acquis*

- Migration data should be collected on a regular basis and should contain information about:<sup>511</sup>
  - Legal immigration.
  - Illegal immigration and unlawful residence.
  - Facilitating of illegal immigration.
  - The use of false or falsified travel documents.
- The migration data systems should provide for the possibility of analysis and exchange of the collected information.<sup>512</sup>
- Data collection and practice should guarantee the protection of personal data.<sup>513</sup>

#### **Albanian Legislative and Institutional Framework**

Albania agrees on the importance of an effective system of data collection as a necessary instrument for a successful migration management as emphasised also by the Draft of Action Plan on Improvement of the Free Movement of People.<sup>514</sup> This action plan *inter alia* provides for the establishment of an effective system for registration of the data at the border points for all Albanians and foreigners that enter or exit Albanian territory.<sup>515</sup> Also, the establishment of an IT system and other database for the control of the persons and vehicles with the possibility of connection with other national and international database, and with the consular offices, as well as the establishment of a statistics system for the number of persons whose right of entry or exit is forbidden are other objectives of Albania.<sup>516</sup>

At present, the Albanian legislation provides that foreigners are obliged to provide information about their motive of entry, stay, and activity in Albania as well as other information that is considered necessary to clarify that they are not included in the category of persons whose entry and stay in Albania is forbidden.<sup>517</sup> Foreigners that reside for more than one year in Albania must be registered in police organs not later than 10 days after their entry in Albania.<sup>518</sup> Their registration with the police includes a documentation of their general data and fingerprints.<sup>519</sup> In addition, some categories of foreigners that enter/exit Albania must fill out the Entry/Exit card.<sup>520</sup>

<sup>510</sup> See Chapter 3(6) of COM 757/2000 and Chapter 3 of COM 387/2001 on an Open Method of Coordination for the Community Immigration Policy.

<sup>511</sup> See Council Conclusions of 30 November 1994 on the organisation and development of the Centre for Information, Discussion and Exchange on the Crossing of Frontiers and Immigration and Joint Action of 3 December 1998 adopted by the Council on the basis of Article K.3 of the Treaty on European Union concerning the setting up of a European Image Archiving System (FADO).

<sup>512</sup> See Council Conclusions of 30 November 1994 on the organisation and development of the Centre for Information, Discussion and Exchange on the Crossing of Frontiers and Immigration.

<sup>513</sup> See Section 10.2, Data Protection.

<sup>514</sup> As it was on 08/07/2003.

<sup>515</sup> At the time this report was written, the computerisation of all the border points and their connection with the MoPO was proceeding (as stated in the Draft of Action Plan, the deadline to finish the process as provided by the draft is the year 2006 and the responsible organ is MoPO).

<sup>516</sup> Provided by the Draft on the National Strategy on Improvement of the Free Movement of the People.

<sup>517</sup> See Art. 64 of LoF. The refusal to fulfil this obligation may constitute a reason for the refusal or the annulment of the residence permit or visa.

<sup>518</sup> See Art. 66 of LoF. For religious people, crew members and foreigners involved in public institutions, the registration in police organs is done only for reasons of state and public security and by a special order of Minister of MoPO. While minors under 16 years; members of foreign representatives and foreigners employed by the diplomats are exempted from the obligation to register with the police.

<sup>519</sup> *Ibid.*

<sup>520</sup> See Art. 12 of the 1460/2001 MoPO Instruction (Joint instruction MoPO/MoFA). The 2003 MoPO/MoFA Joint Instruction "For a change in the Joint Instruction of the Minister of Public Order and the Minister of Foreign Affairs 'On the procedures for entry, stay and treatment of the foreigners in the Republic of Albania' " mentions that the exception from filling out the entry/exit card exists for the following categories of people: a) foreigners of Albanian nationality; b) foreigners that hold diplomatic or service passport, UN system, NATO or EU Laissez passer; c) foreigners that are allowed to enter Albania without a visa; d) foreigners who hold a border document based on bilateral agreements; e) one day tourists; f) the foreigners who enter into those border points where the computerised system exists. Albanian authorities consider the entry and exit card for the moment as the only source of information for foreigners who enter and exit Albania (Information given by the General Directorate of Border Police on July 17, 2003).

The administrative and judicial organs are obliged to notify the respective state authorities of certain situations<sup>521</sup> concerning foreigners. The same obligations are also exerted upon: a) hotels, hostels, or other places of this nature are obliged to keep a register of the foreigners they shelter and notify the police organs about the number of foreigners registered;<sup>522</sup> b) carriers, which must present before the MoPO a full and exact list of foreign persons that they transport;<sup>523</sup> c) doctors or other physical or legal persons who must notify the police about the personal data disclosed to them, if the foreigner endangers public health, or when the foreigner is declared undesirable or is refused entry and stay in Albania.<sup>524</sup>

Data or information gathered regarding the status and the situation of the foreigner can be passed to other organs of the state or foreign institutions by an authorisation of the Minister of Public order, whose decisions are based on national or public security.<sup>525</sup>

### **Responsible Institutions**

- The Border police authorities and public order police are responsible for registering foreigners who enter and exit Albania.<sup>526</sup>
- Police commissariats receive information from the hotels, hostels or other entities concerning the number of foreigners they have registered.<sup>527</sup> Police commissariats also register the foreigners that want to stay in Albania for more than one year.<sup>528</sup>
- MoPO is responsible for collecting information from MoFA about foreigners whose visa request has been issued or refused,<sup>529</sup> for collecting the information and maintaining the database for foreigners that enter and exit Albania. To date there is not any centralised database for foreigners in the Ministry.<sup>530</sup>
- Every six months MoFA sends to MoPO the list of foreigners whose visa request has been rejected and the MoPO deposits it at the BPCP.<sup>531</sup> The diplomatic and consular representatives abroad inform MoFA of all visas issued, and MoFA in turn informs MoPO before the visa is used (has come into effect).<sup>532</sup>
- MoLSA gathers information on all the applications examined by the local Employment Offices; builds databases and elaborates statistical data on employment issues.<sup>533</sup>

### **Gap Analysis**

#### **(a) Gap Analysis within the Albanian Legislation and the Implementation in Practice**

Not applicable

#### **(b) Gap Analysis between the Albanian Legislation and the EU acquis**

##### **Insufficient exchange of data**

The exchange of data between the different ministries and institutions is insufficient. Regular channels for transmission of migration data on a daily basis do virtually not exist. The INSTAT has very broad competence and cannot replace the necessary migration databases run by a specialised migration authority.

##### **Lack of appropriate databases**

The lack of centralised databases and information systems creates serious impediments for the implementation of the risk analysis method both on a strategic (national) and tactical (local) level. Albanian authorities cannot participate adequately in the international exchange of migration data, or take advantage, of it for the same reason.

##### **Reliability of data**

The reliability of the existing data in the institutions in some cases is doubtful. It must be clearly stated that

<sup>521</sup> Such as cases related to the prohibition of foreigners to enter Albania, for cases of judicial process, measures, sentences, restrictions or obligations imposed on the foreigners, or for cases of illegal stay and employment or for violation of any possible restriction. See Art. 60 of LoF.

<sup>522</sup> See Art. 61 of LoF and Art. 30 of DCM No. 439/2000.

<sup>523</sup> See Art. 65 of LoF. For more in this Report, see Section 7.2 'Carriers liability'.

<sup>524</sup> See Art. 61 of LoF. A foreigner is declared undesirable based on Art. 4 of LoF.

<sup>525</sup> See Art. 82 of LoF. For more information in this Report, see Section 10.2 'Protection of Personal Data'.

<sup>526</sup> See Art. 28 of DCM No. 439/2000 and Art. 66 of LoF.

<sup>527</sup> See Art. 30 of DCM No. 439/2000, and Art. 61 of LoF.

<sup>528</sup> See Art. 66 of LoF.

<sup>529</sup> See Arts. 18/19 of DCM No. 439/2000.

<sup>530</sup> The creation of a whole new information system and databases of MoPO is the aim of an ICITAP project. This system will be the TIMS system and will include the following categories of data: - border control (wanted people, stolen vehicles, guns, entries and exit); - reports on committed crimes; - data about collected evidence; - national archive. (Information obtained from the meeting with the General Directorate of the Border Police on 17 July 2003.)

<sup>531</sup> See Art. 18 of DCM No. 439/2000.

<sup>532</sup> See Art. 19 of DCM No. 439/2000.

<sup>533</sup> See Art. 9 of DCM No. 262/2000 "On the Issuance of the work permits for the foreign citizens."

the existence of sufficient and accurate data is of paramount importance for any project related to migration management.

### **Recommendations**

#### **Database for foreigners**

The database (national register) for foreigners in Albania, envisaged in the National Strategy on Border Control, should be created as soon as possible. It should be administrated by the competent structure within MoPO (Directorate/Office for Migration).

#### **Legal basis of the national register for foreigners**

The LoF should be amended and supplemented in order to provide for a comprehensive legal basis for the establishment and the use of the national register for foreigners with regard to the fact that it will collect and process personal data.

#### **Regular exchange of data between all relevant ministries**

One of the priority tasks of the future inter-institutional migration management authority should be the establishment, facilitation and monitoring of the regular exchange of data between all relevant ministries.

#### **International exchange of information**

Albania should provide data on migration to the established international centres such as CIREFI, based on the arrangements to be made with them. Albania should also establish, based on bilateral and/or multilateral agreements, a regular exchange of data on migration with all its neighbours.

## **10.2. Protection of personal data**

The free movement of persons and the establishment of an area of freedom, justice and security require a free flow of information and personal data between the Member States, which can only be possible if protection of that data can be guaranteed in a homogeneous manner all through the EU. Whatever the nationality or residence of the individual concerned, his/her fundamental rights and in this particular case his/her right to privacy should be safeguarded in compliance with the relevant provisions of the Treaties, the EU Charter of Fundamental Freedoms, Art. 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data of 28 January 1981.<sup>534</sup>

### **EU *acquis***

- The lawful collection and processing of personal data should be subject to specific national legislation offering a level of protection at least equal to that resulting from the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data of 28 January 1981.<sup>535</sup>
- Personal data should be collected only for explicit and legitimate purposes, determined at the time of collection.<sup>536</sup>
- Personal data should be accurate, relevant to the purpose for which it is processed, not excessive and kept up to date. The individual concerned should have the right to request the correction of eventual inaccuracies in the data.<sup>537</sup>
- Legislation should define the length of storage of the personal data. Measure should be taken to ensure that it is deleted if it is no longer necessary for the purposes it has been stored.<sup>538</sup>
- As a rule, the processing of personal data should be carried out with the consent of the data subject.<sup>539</sup> Exceptions to that rule may only take place for the reasons specified in the law and, in principle; the data subject has to be at least properly informed of the processing.<sup>540</sup>
- The data subject should, as a rule, be guaranteed access to the data relating to him/her so as to verify the accuracy and lawfulness of the processing.<sup>541</sup>
- National legislation has to clearly provide for a judicial remedy and damage compensation in case the

<sup>534</sup> See preamble of Directive No. 46 of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (hereinafter Directive No. 46/1995), Titles IV and VI of the Schengen Convention, Art. 8 of the EU Charter of Fundamental Rights and Art. 6 of the Treaty on European Union.

<sup>535</sup> See Arts. 5, 6 of Directive No. 46/1995 and Arts. 117, 118 and 126 of the Schengen Convention.

<sup>536</sup> See Art. 6, para. 1(b) of Directive No. 46/1995 and Arts. 102 and 126 of the Schengen Convention.

<sup>537</sup> See Art. 6, paras. 1(c) and (d) of Directive No. 46/1995 and Arts. 102, 105, 106, 110, 111 and 126 of the Schengen Convention.

<sup>538</sup> See Art. 6, para. 1(e) of Directive No. 46/1995 and Arts. 112, 113 of the Schengen Convention.

<sup>539</sup> See Art. 7 of Directive No. 46/1995 and Art. 126 of the Schengen Convention.

<sup>540</sup> See Arts. 10 and 11 of Directive No. 46/1995 and on the free movement of such data and Art. 126 of the Schengen Convention.

<sup>541</sup> See Art. 12 of Directive No. 46/1995 and Art. 109 of the Schengen Convention.

subject's rights are not respected.<sup>542</sup>

- Member States may adopt legislative measures to restrict the obligations and rights concerning data protection, when such a restriction constitutes necessary measures to safeguard national security, defence, the prevention, investigation, detection and prosecution of criminal offences, or of breaches of ethics for regulated professions or an important national economic or financial interest.<sup>543</sup>
- Transfer of personal data to other institutions or other States should be done only in accordance with national provisions regarding confidentiality and security and, in the case of another State, only if its legislation provides an adequate level of protection of personal data.<sup>544</sup>
- An independent public “supervising” authority should be established or designated with the task of monitoring the protection of personal data.<sup>545</sup>

### **Albanian Legislative and Institutional Framework**

The Constitution of Albania declares that no one may be obliged, except when the law requires it, to make public, data connected with his/her person.<sup>546</sup> The Albanian legislation provides the definition of: 1. Personal data, as all data concerning an individual who is identified or can be identified directly or indirectly by that data.<sup>547</sup> 2. Sensitive personal data, as data such as racial and ethnic origin, political and religious beliefs and convictions, health conditions, sexual life and criminal status.<sup>548</sup>

The Law on Personal Data emphasises *inter alia* that personal data of the persons shall be treated strictly in the way provided by law, and without exceeding the predefined legal purpose they are used for, and the time necessary for the fulfilment of that purpose.<sup>549</sup> In addition, Albanian Constitution acknowledges the right of everyone to become acquainted with data collected about him/her, except for the cases provided by law.<sup>550</sup> Thus the subject of the data shall be preliminary notified before the collection of his/her data has commenced regarding:<sup>551</sup>

- The responsible persons who will proceed the data.
- The persons who will use the data.
- The purpose and the categories of the data proceeded.
- The possibilities for transferring the data in a third place.
- The safeguards that exist during treatment of the data.

The collection, use, and making of public data about a person are done with his/her consent given in complete freedom,<sup>552</sup> except for the cases provided by law.<sup>553</sup> For sensitive personal data and for transferring of personal data abroad the consent of the individual is required in written form.<sup>554 555</sup> However, the transfer to other state organs or foreign institutions of data collected about foreigners in accordance with the legislation for foreigners<sup>556</sup> is only carried out on the authorisation of the Minister of Public Order.<sup>557</sup> Furthermore, the Albanian legislation envisages the right of everyone to request the correction or cancellation of inaccurate or incomplete data or data collected in violation of laws, and the right to contest the treatment of personal data.<sup>558</sup>

<sup>542</sup> See Chapter III of Directive No. 46/1995 and Arts. 111 and 116 of the Schengen Convention.

<sup>543</sup> See Art. 13 of Directive 46/1995 and Arts. 102 and 109 of the Schengen Convention.

<sup>544</sup> See Arts. 16, 17 and Chapter IV of Directive 46 and Arts. 126, 127 and 129 of the Schengen Convention.

<sup>545</sup> See Chapter VI of Directive No. 46/1995 and Arts. 114 and 115 of the Schengen Convention.

<sup>546</sup> See Art. 35 of CoA. See also Art. 3 of Law No. 8517/1999 “On the protection of personal data” (hereinafter Law No. 8517/1999).

<sup>547</sup> See Art. 2 Law No. 8517/1999.

<sup>548</sup> *Ibid.*

<sup>549</sup> Law No. 8517/1999, Art. 5 “On the way of the treatment of the personal data” provides that the treatment of the personal data shall be: a) in the way foreseen by this law; b) for a predefined, clear and legal purpose; c) accurate, and based on updated data; d) without exceeding the purpose for which they are treated and the necessary time required for the fulfilment of the purpose; e) creating safeguards for their protection against damages; f) using only the data that is important and necessary for the fulfilment of the purpose for which they are treated.

<sup>550</sup> See Art.35 of CoA; Arts. 6 and 12 of Law No. 8517/1999. Art. 12 provides that everyone whose data is being proceeded, has the right to be informed at any time about the treatment of his/her data and the person responsible or involved in the treatment of the data is obliged to give the subject of the data all the information required within 10 days from the day of filing of the request.

<sup>551</sup> See Art. 6 of Law No. 8517/1999.

<sup>552</sup> See Art. 35 of CoA and Art. 10 of Law No. 8517/1999.

<sup>553</sup> See Art. 35 of CoA; Art. 11 of Law No. 8517/1999 provides that the preliminary consent is not required when: a) the treatment of the data is necessary for the accomplishment of a contract where the subject of the data is a party; b) the treatment of the data is necessary for the accomplishment of a legal requirement of the subject of the data himself; c) when the data is taken from the registers, lists, acts or documents publicly known by everyone; d) when the treatment is necessary for the protection of the life and physical integrity of the person him/her self or of a third person on condition that the consent of the subject is impossible because of physical impossibility, because of lack of ability to act or in case (s)he is irresponsible.

<sup>554</sup> See Art.10 of Law No. 8517/1999.

<sup>555</sup> Art. 14 of Law No. 8517/1999 provides that the personal data can be transferred abroad only in the cases as below: a) by the consent of the subject of the data; b) when it is allowed by law; c) when the jurisdiction on which the foreign authority responsible for the treatment of the personal data offers the same guaranties as this law.

<sup>556</sup> Referring to LoF.

<sup>557</sup> Supra no. 5274. See also Art. 82 of LoF. The Minister of MoPO may refuse or restrict the transfer of personal data based on public or national security. Personal data of foreigners is not permitted to be passed on to other organs or persons if this will infringe the private life of the foreigner and is not essentially related to the scope of application of the legislation for the foreigners.

<sup>558</sup> Art. 35 of CoA, and Art. 13 of Law No. 8517/1999.

The Law on Protection of Personal Data<sup>559</sup> acknowledges the right of individuals to complain for violations of rights pertaining to personal data to the People's Advocate,<sup>560</sup> as well as to the administrative<sup>561</sup> and judicial organs.<sup>562</sup> The individuals also have the right to require reimbursement for any damages caused by the violation of their personal data.<sup>563</sup>

### **Responsible Institutions**

- The Minister of Public Order, MoPO authorises the transfer of the data related to foreigners to other state organs or foreign institutions.
- The People's Advocate is responsible for receiving, investigating and recommending the complaints related to personal data, and for establishing a register on the treatment of the personal data.<sup>564</sup>
- Administrative organs examine complaints for the violation of the rights of personal data.<sup>565</sup>
- District Courts adjudicate the complaints related to personal data protection.<sup>566</sup>

### **(a) Gap Analysis within the Albanian Legislation and the Implementation in Practice**

#### **Lack of clarity**

Article 66 of the LoF states that obligatory registration with the police for foreigners intending to stay in Albania no less than a year includes the data defined in the "by-laws" but does not further specify which by-laws those are.

### **(b) Gap Analysis between the Albanian Legislation and the EU acquis**

#### **Length of storage of personal data**

Law No. 8517/99 'On data protection' includes, in line with the *acquis*, a general prohibition to keep data longer than the time considered necessary for the realisation of the collection purpose. That provision, however, is not further complemented with specific time limits for the different collection purposes and cases, as is the case with the *acquis*.<sup>567</sup> Albanian provisions establishing the obligation and procedure for the collection, processing and exchange of data regarding foreigners<sup>568</sup> do not specify for how long that data can be stored and processed.<sup>569</sup>

#### **Judicial remedy**

Articles 17 and 19 of Law No. 8517/99 on data protection lay down that the procedures for administrative appeal and for the claim and execution of damage are regulated "by law" without further specifying the relevant laws. Such a lack of reference to the applying legislation constitutes a serious obstacle for the exercise of the right to judicial remedy on the part of the data subject and is therefore incompatible with EU *acquis* data protection provisions.

#### **Supervising Authority**

At the moment, provisions of the Law on Personal Data regarding the obligation of the People's Advocate to deal with the complaints and establish the national register on personal data have not been fully implemented.<sup>570</sup> Also, the competencies of this Authority are not in full conformity with the EU *acquis* since they do not have a specific and clear task to constantly monitor the compliance with the Law on Personal Data.

<sup>559</sup> See chapter III, Art.13-19 of Law No. 8517/1999.

<sup>560</sup> See Art. 15 of Law No. 8517/1999 and the Law on People's Advocate. So far no complaints have been lodged by the foreigners at the People's Advocate office for violation of their personal data rights (information obtained on 14.10.2003 by the People's Advocate Office). The Law on People's Advocate does not provide for a specific procedure for the complaints concerning personal data, they are treated the same as other complaints for violation by the Public Administration Organs of the rights, freedoms and interests. The People's Advocate investigates the complaint, and in case of violation it recommends: a) the administrative organ to correct the right violated; b) recommends for measures to be taken by the higher organ in hierarchy about the right violated; or c) recommends the prosecutor office to start the judicial proceedings in case of elements of a criminal act (Art. 20 Law on People's Advocate). For serious violations, it recommends any organ, i.e. Parliament for the resignation of the officials responsible for the violation; or it recommends those persons whose right has been violated to lodge a complaint in the court (Art. 21 of the Law of People's Advocate).

<sup>561</sup> See Art. 17 of Law No. 8517/1999.

<sup>562</sup> See Art. 18 of Law No. 8517/1999.

<sup>563</sup> See Art. 19 of Law No. 8517/1999.

<sup>564</sup> See Art. 15 of Law No. 8517/1999 and the Law on People's Advocate No. 8454/1999. By the time this report was written the procedures for the drafting of a register for the treatment of personal data had just started in the institution of the People's Advocate (information given on 14.10.2003 by the Office of the People's Advocate).

<sup>565</sup> See Art. 17 of LoF.

<sup>566</sup> See Art. 18 of LoF.

<sup>567</sup> See specific timeframes laid down in Arts. 112 and 113 of Schengen Convention.

<sup>568</sup> See previous, section 10.1 on data collection and exchange.

<sup>569</sup> This gap is especially pressing in light of the upcoming introduction of the new information system of the ministry, which will accumulate a great amount of personal data.

<sup>570</sup> *Supra*, no. 56259 and 5663.

## **Recommendations**

### **Length of storage of the personal data**

The Albanian legislation should provide specific timeframes for the storage of personal data according to the purpose of collection.

### **Supervising Authority**

The Law on People's Advocate should specifically mention the obligations of this Authority to supervise the application of data protection provisions. Measures must be taken by the People's Advocate to implement its obligations under the Law on Data Protection.

### **International instruments**

Albania should ratify the CoE Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data of 28.01.1981, already ratified by EU Member States.

### **Data clauses in agreements**

Albania should systematically include in the bilateral and/or multilateral agreements on exchange of migration data, police co-operation, readmission, etc., clauses concerning the protection of personal data.

## **B. INTERNATIONAL STANDARDS CONCERNING STATELESSNESS**

This section of the report intends to avoid overlapping with the other parts of the report, thus the analysis will be strictly focused on the requirements of the Conventions and the gaps of the Albanian legislation in this specific area. This section starts with a general introduction concerning the relevant Conventions and the regime as outlined by Albanian law. The following sections then outline the main principles of the Conventions and analyse the respective legislation and indicate the gaps where relevant. The principles of the Conventions have been divided into four parts, which correspond mainly to the divisions found in the 1954 Convention. Subsequent analysis then follows the structure of the previous section of the report under the heading "The Albanian Legislation and Gap Analysis". The final part of the section "Recommendation" enumerates some of the main measures that Albania needs to take in order to address the gaps found.

### **I. Introduction to International Standards concerning Statelessness**

- UN Convention relating to the Status of Stateless Persons (1954).
- UN Convention on the Reduction of Statelessness (1961).

The UN Convention on the Status of Stateless Persons of 1954 entered in force on 6 June 1960<sup>571</sup> with the aim to regulate and improve the status of the stateless persons. In line with its principles, the UN Convention on the Reduction of Stateless Persons of 1961<sup>572</sup> entered into force on 13 December of 1975. The specific objective of this Convention is to promote the reduction of statelessness through the facilitation of naturalisation in the country of domicile. The purpose of the two Conventions<sup>573</sup> is to secure the widest possible exercise of the fundamental rights and freedoms for the stateless persons. Albania has acceded to these Conventions respectively on 23 June 2003 and on 9 July 2003.<sup>574</sup>

No specific law in Albania fully regulates the regime of stateless persons. The Constitution, the Law on Foreigners, and the Law on Albanian Citizenship partly lay down their status in Albania, but still do not provide a comprehensive framework to protect stateless persons. The Albanian Constitution accords to stateless persons and foreigners in Albania equal fundamental rights and freedoms with those enjoyed by nationals, unless otherwise specifically provided by the Constitution.<sup>575</sup> As a consequence, the rights enjoyed by the stateless persons often do not coincide with those accorded to nationals. Taking in consideration the emphasis of the international instruments on the protection of the rights of the stateless persons, and the fact that Albania has already made the Conventions part of its internal legislation, this section aims at identifying which are the main gaps and inconsistencies of the current legislative framework. It will serve as an indication of the necessary measures to be taken by Albania in order to have its internal legislation consistent and in conformity with the Conventions ratified.

<sup>571</sup> This Convention is referred hereinafter as the '1954 Convention'.

<sup>572</sup> This Convention is referred hereinafter as the '1961 Convention'.

<sup>573</sup> The two Conventions are referred hereinafter as the "Conventions".

<sup>574</sup> The accession is done respectively by Law No. 9057/24.04.2003 and Law No. 9059/08.05.2003.

<sup>575</sup> Art. 16 of CoA.

The section intends to avoid overlapping with the other parts of the report. Thus the analysis will be strictly focused on the requirements of the Conventions and the gaps of the Albanian legislation in the specific area. It outlines the principles of the Conventions and analyses the respective legislation and indicates the gaps where relevant. Principles of the Conventions have been divided into four parts, which correspond mainly to the divisions found in the 1954 Convention. The same structures have followed the second part of the section “the Albanian Legislation and Gap Analysis”. The final part of the section “Recommendation” enumerates some of the main measures that Albania needs to take in order to address the gaps found.

## 2. Principles of the Conventions

### 2.1. General Rights and Provisions

- The term “stateless person” is defined as “a person who is not considered as a national by any State under the operation of its law.”<sup>576</sup>
- The Conventions should be applied to stateless persons “without discrimination as to race, religion or country of origin.”<sup>577</sup>
- At least equal treatment with nationals should be accorded to stateless persons with respect to freedom to practise their religion and freedom as regards the religious education of their children.<sup>578</sup>

### 2.2. Juridical Status

- The personal status of a stateless person should be governed by the country of his/her domicile and the rights previously acquired, especially rights pertaining to marriage, should be respected.<sup>579</sup>
- The rights of movable and immovable property<sup>580</sup> and the right of association<sup>581</sup> should be as favourable as possible and not less favourable than those of foreigners in general.
- The protection of artistic rights and industrial property should be the same as that of nationals.<sup>582</sup>
- Stateless persons should have free access to the courts of law of all Contracting States and access to the courts in the country of his/her habitual residence with the same treatment accorded to its nationals.<sup>583</sup>

### 2.3. Gainful Employment and Welfare

- The same treatment as nationals should be accorded to stateless persons with respect to elementary education<sup>584</sup> and rationing.<sup>585</sup>
- The same treatment as nationals should be accorded to stateless persons lawfully staying in the Contracting States with respect to public relief,<sup>586</sup> labour legislation<sup>587</sup> and social security.<sup>588</sup>
- Stateless persons lawfully staying in the Contracting States should have treatment as favourable as possible, and not less favourable than that accorded to foreigners in general, in respect to the right to engage in wage-earning employment,<sup>589</sup> self-employment<sup>590</sup> and liberal professions,<sup>591</sup> the right to housing,<sup>592</sup> the right to public education other than elementary education, and the recognition of foreign diplomas and certificates.<sup>593</sup>

### 2.4. Administrative Measures

- When the exercise of a right by a stateless person normally requires the assistance of a foreign state to

<sup>576</sup> Art. 1, Convention of 1954.

<sup>577</sup> Art. 3, *Ibid.*

<sup>578</sup> Art. 4, *Ibid.*

<sup>579</sup> Art. 12 of 1954 Convention provides that the rights previously acquired from the stateless persons related to personal status shall be respected by the CS subject to compliance, if this be necessary, with the formalities required by the law of that State, provided that the right in question is one which would have been recognised by the law of that State had (s)he not become stateless.

<sup>580</sup> Art. 13 of 1954 Convention.

<sup>581</sup> Art. 15, *Ibid.*

<sup>582</sup> Art. 14, *Ibid.*

<sup>583</sup> Art. 16, *Ibid.*

<sup>584</sup> Art. 22(1), *Ibid.*

<sup>585</sup> Art. 20, *Ibid.*

<sup>586</sup> Art. 23, Convention of 1954.

<sup>587</sup> Art. 24, Convention of 1954. Labour legislation in matters such as remuneration, family allowances, hours of work, overtime arrangements, holidays with pay, restriction on home work, minimum age of employment, apprenticeship and training, women’s work and work of young persons and enjoyment of benefits and collective bargaining.

<sup>588</sup> Social insurance includes legal provisions in respect of employment injury, occupational diseases, maternity leave, sickness, disability, old age, death, unemployment, family responsibilities, and any other contingency which is covered by a social security scheme, as well as the right of compensation for the death of a stateless person resulting from employment injury.

<sup>589</sup> Art. 17, *Ibid.*

<sup>590</sup> Art. 18, *Ibid.*

<sup>591</sup> Art. 19, *Ibid.*

<sup>592</sup> Art. 21, *Ibid.*

<sup>593</sup> Art. 22, *Ibid.*

which they cannot have recourse, the State of his/her residence should arrange such assistance by its own authorities.<sup>594</sup>

- The freedom of movement and the right to choose their place of residence within the country should be accorded to stateless persons lawfully in that country, subject to the regulations applicable to foreigners generally.<sup>595</sup>
- The Contracting Parties should issue identity papers to any stateless persons in their territory who do not possess a valid travel document and should issue travel documents for travelling abroad to stateless persons lawfully staying in their territory, unless compelling reasons of national security or public order require otherwise.<sup>596</sup>
- The principle of equal treatment with nationals applies in respect to fiscal charges that stateless persons must pay for administrative assistance.<sup>597</sup>
- A Contracting Party should permit the transfer of assets of the stateless person which they have brought into the territory to another country where (s)he will be settled.<sup>598</sup>
- The Contracting States shall not expel a stateless person lawfully in their territory, save on the grounds of national security or public order, and the expulsion should only come about by a decision reached with due process.<sup>599</sup>
- The Contracting Parties should facilitate as far as possible the assimilation and naturalisation of stateless persons.<sup>600</sup>
- Stateless persons should have the right to acquire the nationality by birth or naturalisation in certain circumstances, and renunciation and deprivation of nationality is allowed only if the person shall not remain stateless.<sup>601</sup>

### 3. Albanian Legislation and Gap Analysis

#### 3.1. General Rights and Provisions

##### Definition of stateless persons

At present, the Albanian legislation does not define a stateless person at all. It only provides the definition of foreigners as 'persons who do not have Albanian citizenship', also including stateless persons in this category.<sup>602</sup> Regardless of the absence of the definition, a few laws mention stateless persons as a distinct category from that of foreigners.<sup>603</sup> As a consequence, it is not clear whether stateless persons fall under the category of foreigners in general and are accordingly regulated by the same provisions, or whether they are not regulated at all, unless specifically mentioned by the respective laws as a particular category.

##### Principle of Non-discrimination and equal treatment

The principle of non-discrimination is generally recognised by Albanian laws and is in coherence with the principles of the two Conventions. The Albanian Constitution provides that no one may be unjustly discriminated against for reasons such as gender, race, religion, ethnicity, language, political, religious or philosophical beliefs, economic conditions, education, social status, or ancestry.<sup>604</sup> The Labour Code further reiterates that discrimination is prohibited in respect of employment, profession and treatment of employees.<sup>605</sup> However, the definition of discrimination in the Labour Code lacks clarity.<sup>606</sup>

The principle of equal treatment and non-discrimination is also found in the Code of Administrative Procedures and the Criminal Code. As required also by the Conventions, these laws prohibit discrimina-

<sup>594</sup> See Art. 25 of 1954 Convention. CS shall deliver to stateless persons such documents or certifications as would normally be delivered to aliens by or through their national authorities upon charging moderate fees, commensurate with those charged to nationals for similar services.

<sup>595</sup> Art. 26 of 1954 Convention of 1954.

<sup>596</sup> Arts. 27 and 28 of 1954 Convention.

<sup>597</sup> Art. 29 of 1954 Convention.

<sup>598</sup> Art. 20 of 1954 Convention.

<sup>599</sup> Art. 31 of 1954 Convention.

<sup>600</sup> Art. 32 of 1954 Convention and Art.1 of 1961 Convention.

<sup>601</sup> Arts. 1-9 of 1961 Convention.

<sup>602</sup> See Art. 2 of the Law on Foreigners. As of October, 2003, MoPO was working on a Draft Law "On Some Amendments on the Law on Foreigners". The October 2003 draft provides the definition of stateless person as "a person who is not citizen of any state", thus being in line with the 1954 Convention.

<sup>603</sup> For example, Law No. 8389/1998 "On Albanian Citizenship" and Law No. 8950/2002 "On Civil Status" accord different treatment to stateless persons as compared to foreigners in general.

<sup>604</sup> Art. 18 of CoA. This article also provides that all are equal before the law.

<sup>605</sup> See Art. 9 of Labour Code (7961/1995) as amended by Law No. 8085/1996 and Law No. 9125/2003. This article defines discrimination as any differentiation, exception, or preference based on race, colour, sex, age, religion, political beliefs, national and social origin, family ancestry, physical and mental disabilities which infringes the right of the individual to be equal in respect of employment and treatment at work. "Employment and profession" refers to professional orientation and qualification, employment in various professions, and the terms and conditions relating to division of the burden of work, job performance, remuneration, social assistance, discipline, or termination of the contract.

<sup>606</sup> See in this report, Part A "Gap analysis" Section 7 "Equal treatment / Non-discrimination".



tion of the persons on the grounds of race, religion or country of origin by the public administration or state officials during the performance of their duties.<sup>607</sup>

## Religion

The Albanian legislation is in conformity with the Conventions principles in respect of religion. Albania recognises the freedom of religion for everyone, without restricting this right to only Albanian citizens.<sup>608</sup> In line with the Conventions, Albania allows the establishment of private religious schools as long as their academic program is in compliance with the legislation in force.<sup>609</sup>

## 3.2. Juridical Status

### Personal Status

The civil status of nationals, permanent stateless persons and foreigners is governed by the Law on Civil Status.<sup>610</sup> In accordance with the principle envisaged by the Conventions, the Albanian legislation states that the personal status of a stateless person is determined by the documents of the state where the person is born or comes from.<sup>611</sup> The acts of births, deaths, and marriages of stateless persons are registered in the civil status office where these persons are registered or where the marriage took place.<sup>612</sup> In case the above mentioned acts are compiled abroad, they shall be sent by 'diplomatic procedure' to the relevant office of Albanian Civil Status, which has the fundamental register of stateless persons.<sup>613</sup> This law does not mention what the diplomatic procedure will be for the stateless persons, which makes it a serious gap, especially when the Law on Exercise of Consular Functions does not provide for assistance to the stateless persons but only to nationals.<sup>614</sup>

### The right of movable and immovable property

The rights of stateless persons in relation to movable and immovable property are equal to the rights of foreigners in general in Albania, as also required also by the 1954 Convention.<sup>615</sup> The Albanian Constitution guarantees the right of private property to everyone<sup>616</sup> and, thus, it puts nationals, stateless persons and foreigners in an equal position. In addition, stateless persons<sup>617</sup> enjoy equal rights with nationals in respect of immovable property other than agricultural land and forests.<sup>618</sup>

### Artistic rights and industrial property

The Albanian Constitution envisages the freedom of artistic creation and scientific research, copyright, as well as the right of profits resulting from them both for the nationals and for the foreigners.<sup>619</sup> However, the Law on Copyright<sup>620</sup> and the Law on Industrial Property<sup>621</sup> which regulate the above mentioned issues do not specifically provide for the regime of stateless persons.

The Law on Copyright accords equal protection with nationals only to permanent residents in Albania.<sup>622</sup>

<sup>607</sup> See in this report, Part A "Albanian Legislation" Section 7 "Equal Treatment/Non-Discrimination".

<sup>608</sup> Art. 24 of CoA provides that freedom of conscience and religion is guaranteed. Everyone is free to choose or to change his/her religion or beliefs, as well as to express them individually or collectively, in public or private life, through cult, education, practices or the performance of rituals. No one may be compelled or prohibited to take part or not in religious community or in religious practices or to make his/her beliefs or faith public.

<sup>609</sup> Public schools in Albania are secular. For further information, see Law No. 7952/1995 'On Pre-university educational system'. See also DCM No. 248/1999 'On the criteria and procedures for granting the licence to the educational private institutions which teach religious subjects or in foreign language.'

<sup>610</sup> See Art. 4. of Law No. 8950/2002 "On Civil Status".

<sup>611</sup> Ibid.

<sup>612</sup> See Art. 23 of Law No. 8950/2002. Art. 46 of this Law provides that a marriage between a stateless person who is a temporary resident in Albania and an Albanian citizen is concluded on the basis of the documents (notarised and authenticated by the MoFA of the country of Residence) of the state (s)he has his/her permanent residence. While Art. 48 provides that the marriage between permanent or transit stateless persons is concluded in the Albanian civil Status Office only for emergency situations (such as danger of death which is proved by a medical report, or imprisonment of any of the parties in Albania) or due to the impossibility to go in their country. It is not clear what is 'impossibility to go in their country in relation to stateless persons', who being stateless, do not have any country.

<sup>613</sup> Art. 23, Law No. 8950/2002.

<sup>614</sup> See Law No. 8372/1998 "On exercise of consular functions."

<sup>615</sup> Art. 13 of 1954 Convention.

<sup>616</sup> Art. 41 of CoA. This article provides inter alia that private property can be acquired by gift, inheritance, purchase or any other means provided by Civil Code.

<sup>617</sup> Please note that the Civil Code does not distinguish between stateless persons and foreigners.

<sup>618</sup> See Law No. 8337/1998 'On privatisation of the agricultural land and forests'. In accordance with this law, foreigners (does not distinguish between foreigners and stateless persons) do not enjoy the right of ownership over the agricultural land but only the right of leasing up to 99 days. The right of ownership pertains only to nationals. See also Law No. 8159/1996 on some amendments of Law No. 7512/1991 'On the protection of the private property, free enterprise, independent activities and privatisation' which provides that foreigners have the right to buy land, or divest ownership to third parties.

<sup>619</sup> Art. 58 of CoA.

<sup>620</sup> Law No. 7564/1992 "On Copyright" as amended by Law No. 7293/1996, Law No. 8594/2000 and Law No. 8630/2000.

<sup>621</sup> Law on Industrial Property No. 7819/1994 as amended by Law No. 8477/1999 protects industrial property for inventions and models of use, trade and service marks, industrial designs, trade names.

<sup>622</sup> Art. 51 of the Law on Copyright provides that: The disposition of this law covers: 1) The works of Albanian nationals and permanent residents, regardless of the country where the work has been published for the first time; 2) The works published for the first time in Albania or in any other country part of international treaties for copyright where Albania has adhered; 3) For the works published for the first time in a state not part of such agreements, when these works are published simultaneously in Albania (or any other country part of copyright agreements) or of a maximum of 30 days after it has been published in a third country.

As for non permanent stateless persons, this law offers protection if their work is published for the first time in Albania or in any other country that has an agreement with Albania, or if the work is published in Albanian simultaneously or 30 days after its publication in a third country.<sup>623</sup> As a consequence this provision is not in full conformity with the Conventions which provide for equal treatment with nationals.

In respect of industrial property, the Albanian legislation offers protection to foreigners if they are from a country which is a party to the international agreements to which Albania has adhered, or based on reciprocity.<sup>624</sup> As stateless persons do not have the citizenship of any other country, they do not enjoy any protection concerning their industrial property rights in practice, which is contrary to the Conventional principle that requires equal treatment with nationals in respect of this issue.<sup>625</sup>

### **Right of Association**

The right of association for stateless persons as provided by the Conventions<sup>626</sup> is also found in the Albanian legislation. The Albanian Constitution envisages the right of everyone to organise collectively for any lawful purpose, a right applicable to foreigners and stateless persons.<sup>627</sup> In addition, employees, regardless of their nationality, enjoy the constitutional right to unite freely in labour organisations.<sup>628</sup>

The Albanian legislation does not provide specifically for the right of stateless persons to establish, or participate in any non-governmental organisation but it mentions the foreigners in general,<sup>629</sup> although it is not clear if this right pertains to stateless persons as well.

### **Access to Courts**

The Albanian Legislation provides the same regime to stateless persons and foreigners as well as to nationals in relation to access to courts. Everyone with a legal capacity that has a legal claim can have access to courts, and the court cannot refuse to examine and make decisions about complaints forwarded to it.<sup>630</sup> In addition to the other rights provided in general for nationals, during the court proceedings, foreigners and stateless persons also have the right of a free of charge interpreter/translator if they do not understand the Albanian language.<sup>631</sup> However, such rights are not specifically mentioned for stateless persons but are included in the rights stipulated for foreigners in general.<sup>632</sup>

The Albanian legislation does not contain any provision similar to that of the Convention<sup>633</sup> in relation to access to courts of the stateless persons in other countries other than that of habitual residence.

## **3.3. Gainful Employment and Welfare**

### **Wage earning employment, self employment<sup>634</sup> and liberal professions**

The legislative framework in force in Albania in relation to these issues is generally in line with the Conventions. The Albanian Constitution declares that every one has the right to earn his/her living by lawful work, to choose the profession, place of work as well as his/her system of professional qualification.<sup>635</sup>

The Law on the Encouragement of Employment envisages equal rights between nationals, stateless persons and foreigners only if prior international bilateral or multilateral agreements have been concluded.<sup>636</sup> Even though it mentions that stateless persons are equal with foreigners, the Law on the Encouragement of Employment, as it

<sup>623</sup> Ibid.

<sup>624</sup> Art. 2 of the Law on Industrial Property provides that this law is also valid for physical and legal foreign persons if they are: 1) From countries party in international treaties and convention in the field of industrial property to which Albania has adhered 2) From countries with which the principle of reciprocity applies.

<sup>625</sup> Art. 14 of 1954 Convention.

<sup>626</sup> Art. 15 of 1954 Convention.

<sup>627</sup> Art. 46, CoA.

<sup>628</sup> See Art. 50 of CoA. See also Art. 10 of the Labour Code which provides that no one can make employment conditional to resignation of the right of a membership in a legally established trade union, or fire an employer because of his/her membership in such an organisation.

<sup>629</sup> Art. 4 of the Law on Non Profit Organisations provides that every natural, juridical, local or foreign person has the right to establish a non-profit organisation.

<sup>630</sup> See Art. 3 of Civil Code (7850/1995) and Arts. 3 and 32 of Civil Procedural Code (8116/1999).

<sup>631</sup> For the safeguards provided to stateless/foreigners during court proceedings such as the right to be brought before a judge, the right to be notified in a language (s)he understands, the right to have a free of charge defendant appointed by the court in case of lack of financial means see CoA, Arts. 27-34, Criminal Procedural Code (7905/1995) Arts. 9, 123-127; Civil Procedural Code Arts. 27, 116 and Art. 1 of the Law on Advocacy No. 7827/1994.

<sup>632</sup> Albanian legislation regulating access to courts generally refers only to foreigners, not mentioning at all stateless persons as a distinct category. Only the Criminal code regulates the regime of the stateless persons as opposed to that of the foreigners. Art.8 of the Criminal Code provides that the Criminal Code is applicable to stateless persons in the same way as it is for the foreigners in general.

<sup>633</sup> See Art. 16 of the 1954 Convention.

<sup>634</sup> Employment and self-employment in Albania are regulated by the same legislation.

<sup>635</sup> See Art.49 of the Constitution.

<sup>636</sup> See Art. 3(2) of Law No. 7995/1995 'On the Encouragement of Employment.' The rights are subject to bilateral or multilateral agreements with the country of origin.

is phrased, cannot at all be applied in practice to stateless persons. The latter do not have the citizenship of any country, therefore reference cannot be made to 'agreements with the country of origin'.<sup>637</sup>

The Labour Code does not contain any provision for the regime of stateless persons. They are treated, as provided also by Convention,<sup>638</sup> as other foreigners in Albania. In relation to liberal professions, the Albanian legislation varies depending on the profession.<sup>639</sup> However, no distinction between their rights and the rights of the foreigners in general was found in respect to this issue.<sup>640</sup>

### Rationing

As a rationing system does not exist, the provision on rationing does not apply to Albania.

### Housing

The constitutional provision about the State objective to supplement private initiative on fulfilment of the housing needs is extended only to citizens.<sup>641</sup> In addition, the governmental programs for housing<sup>642</sup> are addressed only to some special categories<sup>643</sup> of Albanian families. These programs do not provide any support concerning housing for stateless persons or foreigners in Albania, as required by the Convention.<sup>644</sup>

### Public Education

The Constitution of Albania establishes the right of everyone to education, without restricting it only to nationals.<sup>645</sup> However, the Law on Pre-university Education<sup>646</sup> does not mention specifically the equal treatment of stateless persons with the nationals in respect of elementary public education, as required by the Conventions. It mentions only the right of the foreigners to be educated in public pre-university education, which is regulated by the by-laws of the MoES.<sup>647</sup> The Normative Dispositions<sup>648</sup> mention that education is mandatory until the 8<sup>th</sup> grade of elementary school for all children between the age of 6-16 years old, but does not specify if this requirement is also extended to stateless persons and foreigners.<sup>649</sup> On the other hand, normative dispositions establish the right of Albanian citizens and foreign pupils who have studied in foreign institutions to continue their studies in Albania without mentioning anything about the regime of the stateless persons.<sup>650</sup>

In relation to university education, the Law on Higher Education<sup>651</sup> does not mention stateless persons but only foreigners, whose admission is done in accordance with the quotas approved by the Council of Ministers.<sup>652</sup> Foreign diplomas either for Albanian citizens or for foreigners are recognised based on bilateral or multilateral agreements, or by ad hoc commissions established by the Ministry of Education and Science for the evaluation of a diploma obtained in a foreign institution.<sup>653</sup> It is not clear whether these provisions are also applicable also to stateless persons<sup>654</sup> or whether stateless persons are not regulated at all by these laws.

<sup>637</sup> Art. 2(3) of Law No. 7995/1995 mentions that in case no prior bilateral or multilateral agreements exist, the regime of the foreigners shall be regulated by legal acts adopted by the Ministry of Labour and Social Affairs. By the time this report was written, no such legal acts were adopted. However, even if this were the case, Art. 2(3) does not mention stateless persons, only foreigners.

<sup>638</sup> See Arts. 18 and 19 of the 1954 Convention.

<sup>639</sup> For some professions such as that of advocate, the recognition of diploma is not enough, as the exercise of this profession requires Albanian citizenship.

<sup>640</sup> This is due to the fact that generally they are considered to be included in the category of foreigners.

<sup>641</sup> See Art. 59 of CoA.

<sup>642</sup> See for example DCM No. 21/2001 'On the approval of action plan for the national strategy of housing.

<sup>643</sup> Such as homeless families as they are defined by the DCM No. 49/1993 "On the definition of criteria for homeless families", families whose houses have been damaged by atmospheric conditions or for the families who lost their houses in the pyramid firms. For the last category a bilateral agreement has been signed with Greece for the "Greek Loan". See Law No. 8448/1998 "On the ratification of the agreement with Greece for the Greek Loan for the Housing Program".

<sup>644</sup> See Art. 21 of the 1954 Convention.

<sup>645</sup> Art. 57 of CoA provides that: Everyone has that: 1) Every one has the right to education; 2) Mandatory schooling is determined by law. 3) General high school public education is open for all. 4) Professional high school education and higher education can be conditioned only on criteria of abilities. 5) Mandatory education and general high schools are free. 6) Pupils and students may also be educated in private schools of all levels, which are created and operated on the basis of law. The autonomy of academic freedom of higher education institutions is guaranteed by law.

<sup>646</sup> Law No. 7952/1995.

<sup>647</sup> See Art. 11(3) of Law No. 7952/1995. From the meeting held with the representatives of MoES on 18 July 2003 it was learned that the foreigners have the right to education in elementary and high schools.

<sup>648</sup> It is a document which lays down the legal basis and rules to be followed in respect of the public education system in the Republic of Albania. The one we are referring to in this report is as it was in by September 2003. Information was received in the official website of the Ministry of Education and Science in September 2003 ([www.mash.gov.al](http://www.mash.gov.al)).

<sup>649</sup> See Art. 6 of Normative Dispositions.

<sup>650</sup> See Art. 13 of Normative Dispositions.

<sup>651</sup> Law No. 8641/1999 'On Higher Education in the Republic of Albania.'

<sup>652</sup> See Art. 31(6) of the Law on Higher Education. In order to be accepted as a student, a foreigner must be fluent in the Albanian language. For this reason, DCM No.162/1995 established a one-year Albanian language course aimed at assisting the foreigners who want to study in Albania to gain knowledge of the Albanian language. For more details, see, Part A, 'Albanian Legislation', Section 5 Long-term Residents (in this report).

<sup>653</sup> See DCM No. 523/2003.

<sup>654</sup> Based on the fact that there is not any definition of 'stateless persons' and Art. 2 of LoF.

## Public Relief

The Albanian constitution declares that everyone who is involuntarily without work and who does not possess other means of support has the right to assistance under the conditions set by the law.<sup>655</sup> However, the Law on Assistance and Social Care extends this right only to Albanian nationals and to non-Albanian citizens that have been living in Albania for a period of more than 10 years.<sup>656</sup> As a consequence, the Albanian legislation does not grant to stateless persons that have been living in Albania for less than 10 years any rights in the field of assistance and social protection, in contradiction with the Conventions' principle which provide for equal treatment with nationals in respect of this issue.

## Labour Legislation and Social Security

The Albanian legislation respects the Conventions<sup>657</sup> in relation to labour legislation. In addition to the Constitutional principle of equal rights and freedoms,<sup>658</sup> the Labour Code<sup>659</sup> prohibits discrimination in respect to treatment at work.<sup>660</sup> The Labour Code regulates the employment contracts for jobs performed in Albania<sup>661</sup> regardless of the citizenship of the parties. As a consequence, provisions related to working hours,<sup>662</sup> late night shifts,<sup>663</sup> remuneration,<sup>664</sup> women's and young persons' work,<sup>665</sup> paid holidays<sup>666</sup> and any other rights deriving from an employment relationship,<sup>667</sup> are the same for nationals as well as for stateless persons.

The Albanian Legislation on Social Insurance<sup>668</sup> does not mention specifically the right of stateless persons to social insurance. It provides only that foreigners are covered by social insurance if they are employed by Albanian employers or they are employed by foreign employers but they do not enjoy better protection in the country of origin.<sup>669</sup> This Law does not determine who will decide if the protection in the country of origin is better or not. This presents a gap, especially in respect of stateless persons who do not enjoy the protection of any country. As a result, specific and clear provisions establishing an equal regime with that of nationals must be adopted. There is a contradiction between the legal provisions and the actual practice in relation to this provision. At the time this report was written, no information about foreigners or stateless persons insured in practice was provided.<sup>670</sup>

## 3.4. Administrative measures

### Administrative Assistance

No legal act in the Albanian legislation providing administrative assistance to stateless persons who cannot recourse directly to any foreign country has not been identified.<sup>671</sup> The Law on Exercise of Consular Functions<sup>672</sup> provides only for administrative assistance for Albanian citizens.<sup>673</sup> It does not mention any similar assistance towards stateless persons.<sup>674</sup> On the other hand, the Law on Civil Status mentions that acts of births, deaths or marriages of stateless persons compiled abroad are delivered through diplomatic procedure to the civil status offices, even though this service for stateless persons is not specifically provided by the Law on the exercise of Consular Functions.<sup>675</sup> Due to the importance of these and/or other documents for the status of a person and, due to the particular position of stateless persons as opposed to that of nationals or foreigners, it is necessary that administrative assistance as mentioned in the Conventions be envisaged clearly in the Law on the exercise of Consular Functions.

<sup>655</sup> See Art. 52 of CoA.

<sup>656</sup> See Art. 4 (2) of Law No. 7710/1993.

<sup>657</sup> See Art. 24 of the 1954 Convention.

<sup>658</sup> See Art. 16 of the CoA.

<sup>659</sup> Law No 7961/1995.

<sup>660</sup> For more see Art. 9 of the Labour Code.

<sup>661</sup> Arts. 3 and 6 of the Labour Code. Art. 3(1) provides that an employment contract is regulated by the law of the state where employee usually performs his/her job, even if (s)he is sent by the employer to work temporarily in another country. Art. 3(4) provides that parties by agreement may choose another law rather than this labour code.

<sup>662</sup> See Arts. 76-92 of the Labour Code. Daily working time is no more than 8 hours. For those under 18 years old is no more than 6 hours per day. Weekly working time is no more than 40 hours.

<sup>663</sup> See Art. 80. Night shift is the work from 22.00-06.00. All the work performed from 22.00-06.00 is paid with an addition to the salary of no less than 50%.

<sup>664</sup> See Arts. 109-128 of the Labour Code.

<sup>665</sup> See Chapter X of the Labour Code, Arts. 98-108 "Special protection for the children and women". Art. 101 forbids night work for children while Art. 108 forbids late night work for women unless decided by DCM.

<sup>666</sup> See Arts. 92-98 of the Labour Code.

<sup>667</sup> Such as minimum age of employment (see Art. 98 of Labour Code), enjoyment of collective bargaining (See Art. 76 of Labour Code).

<sup>668</sup> See Law No. 7703/1993 "On Social Insurance" as amended by Law No. 7932/1995; Law No. 8286/1998; Law No. 8852/200; Law No. 8889/2002.

<sup>669</sup> See Art. 7 of the Law on Social Insurance, and Chapter 3, point C(2) and (3) of Regulation of Social Insurance Institute No. 36, date 24.10.2002 which provides that private Albanian employers are obliged to register the foreigners employed by them in social insurance organs. Rules for payment of contributions shall be the same as those for the Albanian citizens. Foreign employers are obliged to register foreigners that work with them in social insurance organs, unless they file a certificate issued by the social insurance organs of the country of origin certifying their participation in the social insurance scheme.

<sup>670</sup> See above in this Report, Part A, Albanian Legislation, Section 3 "Long Term Residents".

<sup>671</sup> See Art. 25 of the 1954 Convention.

<sup>672</sup> Law No. 8372/1998 "On the Exercise of Consular Functions from the Diplomatic and Consular Representatives".

<sup>673</sup> See Arts. 9-15 of Law No. 8372/1998. Consular authorities offer services for foreigners in the country where consular representatives have jurisdiction, only in relation to delivery of official mail or documents when this is required by the Albanian courts or authorities.

<sup>674</sup> See Art. 16 of Law No. 8372/1998.

<sup>675</sup> See above, Part. C, Section 3 "Judicial Status".

## Freedom of movement

In compliance with the conventions, the Albanian Constitution declares the right of everyone to choose the place of residence and to move freely in Albania.<sup>676</sup> However, for reasons of national and public security, the Albanian legislation restricts the right of a foreigner to live or move in certain areas.<sup>677</sup> It is not clear if this restriction is also for stateless persons, since the Law on Foreigners does not specifically mention 'stateless persons' who by definition in this Law are included in the category of foreigners in general.<sup>678</sup>

## Identity papers and travel documents

The Law on Identification Documents<sup>679</sup> grants the right to obtain an Identity Card only to Albanian Citizens and to permanent foreigners and stateless persons.<sup>680</sup> As a consequence, non-permanent stateless persons are not eligible to obtain this document, contrary to the principles of the Conventions, which requires the Contracting State to issue identity papers to any stateless person who does not possess a valid travel document.

The Law on Foreigners provides foreigners with the right to obtain a Card for Foreigners<sup>681</sup> and a Passport for Foreigners.<sup>682</sup> It is not clear if these two documents can also be issued to stateless persons. However, even if it were interpreted so, by the time this report was written, these documents had not yet been produced.<sup>683</sup> As a consequence, by the time this report was written, stateless persons resident in Albania did not have de jure and de facto any possibility to obtain travel documents for abroad, contrary to the provisions of the Conventions.<sup>684</sup>

## Fiscal Charges

The Albanian legislation on taxation procedures provides that every physical or legal person who owns an activity which has taxable elements as determined by Albanian Laws is responsible to pay respective taxes, without making any distinction between nationals, foreigners or stateless persons, thus being in conformity with the Conventions.<sup>685</sup> Also, by law Albania concludes agreements with other countries to avoid double taxation.<sup>686</sup> However, as declared also by the Conventions, in respect of administrative papers such as identity documents or residence/work permits,<sup>687</sup> the Albanian legislation envisages specific charges, which are different from those imposed on the nationals.<sup>688</sup>

## Transfer of Assets

Albania does not impose any restriction to stateless persons to transfer assets abroad except the ones imposed in general which are also those imposed on nationals. Thus the Albanian legislation aims to prevent money laundering<sup>689</sup> and provides that every individual resident or non resident in Albania is obliged to declare sums above 1 000 000 Leke when entering or exiting Albania. Also money transfer via financial institutions such as banks must be registered by the respective institution when the sum transferred exceeds certain limits.<sup>690</sup> As a consequence, there are no legal barriers to prevent stateless persons from transferring their assets abroad for the purposes of settlement.

## Expulsion

The Constitution of Albania establishes that a foreigner may be expelled only on the grounds specified by law, while the collective expulsion of foreigners is prohibited.<sup>691</sup> In addition to the Constitution, the Law on Foreigners establishes that foreigners may be removed from Albania by a removal order issued by the competent authority of MoPO.<sup>692</sup> The competent authority of MoPO may also issue a special order for the

<sup>676</sup> See Art. 38 of AC.

<sup>677</sup> See Art. 76, LoF. The movement of dwelling of the foreigners in a particular area is restricted for reasons of national and public security, as determined by bylaws.

<sup>678</sup> See Art. 2 of LoF. See also in this Report, in this Section 'Definition of stateless persons'.

<sup>679</sup> Law No. 8952/2002 'On Identification Document'.

<sup>680</sup> Art. 6 of Law No. 8952 provides that an ID card bears all the components of the civil status, photo, ID number (as regulated by Law No. 8951/2002), signature of the person and security elements. An Identity Card will serve as an identification document of Albanian Citizens, permanent stateless persons, and foreigners, and is valid for travel within Albanian territory. The provision of IC has not yet started, even for Albanian nationals.

<sup>681</sup> See Art. 67, LoF. This is a document for travelling within Albania and is issued to the foreigners older than 16 years old, who have been resident in Albania for more than one year.

<sup>682</sup> See Art. 68, LoF. A Passport for Foreigners is issued to permanent residents, refugees, and foreigners who can not obtain any travel document from their country of origin and who either have a five-year residence permit or are of Albanian origin and have obtained a temporary residence permit. It is used by foreigners to travel abroad. See also in this Report, Part A, Section 1.1 "Travel Documents".

<sup>683</sup> See in this report, Part A, Section 1.1 "Travel Documents"

<sup>684</sup> See Art. 28 of the Convention relating to the status of Stateless Persons.

<sup>685</sup> See Arts. 3, 11, 14 of Law No. 8560/1999 "On Taxation Procedures in Albania".

<sup>686</sup> See Art. 10 of the Same Law.

<sup>687</sup> See Art. 29 of the Convention relating to the status of Stateless Persons.

<sup>688</sup> DCM No. 439/2000 provides that the card and passport of foreigners are respectively three and five times the selling price of an Albanian Passport for travelling abroad.

<sup>689</sup> See Art. 10 of Law No. 8610/2000 as amended by Law No. 9084/2003 "On the prevention of Money Laundering".

<sup>690</sup> See Art. 5 of the Law on the Prevention of Money Laundering. The sum must not exceed 20 000 000 Leks.

<sup>691</sup> See Art. 39 of CoA.

<sup>692</sup> See Art. 46 of LoF. A Removal order is issued when there is a final court decision, or when the visa or residence permit is refused or has expired.

expulsion of foreigners in particular cases.<sup>693</sup> However, in line with the Convention, the right of administrative and judicial appeal against the removal or expulsion order is granted to foreigners.<sup>694</sup>

In line with many international documents, the Albanian legislation provides that some categories of foreigners, due to their particular situation or needs, can be expelled only by order of the Minister of Public Order<sup>695</sup> or cannot be expelled at all.<sup>696</sup> However, contrary to the Conventions, which call for further protection of stateless persons in comparison with other foreigners, the Albanian legislation does not include any provision for the protection of stateless persons against removal or expulsion. This category of foreigners, due to their particular status of not having the diplomatic protection of any country, must have a more favourable regime in respect of removal and expulsion.

## Naturalisation

The Albanian legislation is generally in conformity with the principles of the Convention in respect of naturalisation. Albanian citizenship is automatically acquired if at least one of the parents is an Albanian Citizen.<sup>697</sup> If the parents are foreigners or stateless persons, Albanian citizenship can be acquired at birth if both the parents consent to it.<sup>698</sup> In addition, Albanian Citizenship is also acquired by naturalisation.<sup>699</sup> In line with the Conventions, the Albanian legislation establishes a special regime for stateless persons as opposed to the foreigners in general, aimed at the facilitation of their naturalisation.<sup>700</sup>

In line with the spirit of the Conventions and aimed at reducing statelessness, the Albanian legislation makes the relinquishment of Albanian Citizenship subject to strict requirements clearly laid down in law.<sup>701</sup> A persons applying for the relinquishment of Albanian citizenship must prove *inter alia* that (s)he will not become stateless as a result of relinquishment because (s)he holds, has acquired, or has received guarantees from the competent authorities of a foreign state that (s)he will acquire another citizenship.<sup>702</sup> In addition, the Albanian legislation provides that an Albanian citizen who has lost his/her citizenship due to promise to obtain another one can reacquire Albanian citizenship if (s)he does not acquire the promised one within a reasonable time.<sup>703</sup>

## Recommendations

The Albanian legislation generally strives to respect international standards for stateless persons. However there are areas which require amendments of the existing legislation or an adoption of new provisions, beginning with a clear definition of the term “stateless person”. As mentioned in the introduction, the aim of this gap analysis is to identify the problems and the most urgent measures that are feasible for adoption by the Albanian government. Only some of the most significant recommendations are mentioned in this report, but it does not necessarily mean that there is not place for further improvement. More detailed and extensive analysis would go beyond the scope of this project. However, it would be a sound step towards

<sup>693</sup> Such as for foreigners who: 1) Have not left or when there exist well-founded doubts that they will not leave Albania in conformity with the Law. 2) Are illegally staying in Albania. 3) Have been expelled by another country under the readmission agreements. See Art. 47 of LoF.

<sup>694</sup> See Art. 48 of LoF.

<sup>695</sup> See Art. 50 of LoF. The categories of persons who can not be expelled without order of the Minister of Public Order are those foreigners who: a) have a permanent residence permit; b) have been resident since the age of 6 years; c) are members of families of Albanian Citizens or of permanent residents and have cohabited with them for not less than one year; d) have been working and living in Albania for a period of not less than 5 years; e) are work invalid or refugees.

<sup>696</sup> Art. 49 of LoF provides that foreigners or refugees shall not be expelled to another country if their life and freedom are threatened due to their race, religious and political beliefs, ethnic origin, and participation in a political or social group.

<sup>697</sup> See Art. 19 of AC and Art. 7 of the Law on Albanian Citizenship No. 8389/1998 amended by Law No. 8442/1999.

<sup>698</sup> See Art. 8 of the Law on Albanian Citizenship.

<sup>699</sup> See Art. 9 of the Law on Albanian Citizenship. The acquisition of Albanian citizenship is done through an application in the office for passports and foreigners at the local police commissariats where the foreigner is habitually resident. A foreigner can obtain Albanian citizenship if (s)he: 1) Has reached the age of 18; 2) has resided lawfully in Albania for not less than 5 consecutive years; 3) has a dwelling and sufficient income; 4) has never been sentenced in his/her state, any third state or in Albania for a criminal offence punishable by not less than 3 years; 5) has elementary knowledge of Albanian; 6) does not affect the security and defence of Albania.

<sup>700</sup> Art. 9(3) of the Law on Albanian Citizenship provides that stateless persons are not required to fulfil all the requests laid down for foreigners in general (*supra*, no. 701698). A stateless person must only show that (s)he has been resident in Albania for a period of not less than 5 years and is not a danger to public security and defence. If the person is of Albanian origin (up to second grade) (s)he must prove that they have been a resident for not less than 3 years. However, the Albanian legislation does not specify which documents stateless persons must submit at the police authorities. The current MoPo website ([www.mpo.gov.al](http://www.mpo.gov.al)) provides a detailed account of the legal basis, procedures and documentation needed to acquire Albanian citizenship, but does not mention which documents should be presented by stateless persons.

<sup>701</sup> See Art. 15 of the Law on Albanian Citizenship.

<sup>702</sup> Art. 15 of the Law on Albanian Citizenship establishes that a person may relinquish Albanian citizenship by personal request if: 1) the person is over 18 years old; 2) will not become stateless as a result of relinquishment because (s)he holds a foreign citizenship, shall acquire Albanian citizenship or has guarantees for the acquisition of Albanian Citizenship; 3) is resident in a foreign country; 4) is not wanted or being processed for a criminal offence punishable by not less than 5 years of imprisonment; 6) does not have legal obligations towards the state authorities or physical and legal persons.

<sup>703</sup> See Art. 14 of the Law on Albanian Citizenship. The Albanian Legislation is in conformity with the Conventions also in relation to the termination and loss of the Albanian Citizenship of family members. See Art. 6, 7, 8 of the Convention on the Reduction of Statelessness and Articles 11, 13, 15, 16 of the Law on Albanian Citizenship. From 2002 until October 16 2003, the President of Albania has granted Albanian citizenship to 21 people, another 108 people have reacquired Albanian Citizenship, and 1392 people have relinquished Albanian Citizenship. This information was received from the Legal Department, Cabinet of the President on 16.10.2003.

the full compliance with the international standards on the protection of stateless persons if Albania would take into consideration and adjust its laws in compliance with the recommendations as outlined below:

- The Law on Foreigners and other laws that regulate the regime of foreigners should distinguish between foreigners and stateless persons.<sup>704</sup>
- All Albanian laws must be amended in order to specifically provide the rights and duties of stateless persons enshrined in the Conventions, in particular, the provisions related to identity and travel documents,<sup>705</sup> work permits and residence permits, social and health insurance, social services and assistance, housing, artistic rights and industrial property rights.
- Measures must be taken by the relevant organs to implement laws such as the Social Insurance Legislation and the Law on Civil Status in order to enable stateless persons to enjoy their rights in practice.<sup>706</sup>
- The Albanian legislation should adopt specific provisions for the protection of stateless persons against removal and expulsion.
- In respect to naturalisation, the Law on Albanian Citizenship should specify the documentation that must be submitted by the stateless persons as opposed to the documentation submitted by the foreigners.<sup>707</sup>

## C. UN INTERNATIONAL CONVENTION ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES

This last part of the analysis is conducted with reference to the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990) (MWC),<sup>708</sup> to which the Government of Albania aims to accede by 2006.<sup>709</sup> This part of the analysis aims to provide an overall view of the effect of the MWC in the event of Albanian accession. The analysis provided in this section is not as concrete and detailed as the analysis conducted with reference to the EU *acquis*. This section endeavours to examine:

- To what extent, it would be feasible for Albania to implement the MWC.
- In which field legislative reform would need to be undertaken.

Only the main issues at each selected stage of the migration process, from entry to return, are examined.

### I. Introduction to the UN Convention on the Protection of All Migrant Workers

The MWC provides a comprehensive framework for the protection of all migrant workers and their families throughout the entire migration process<sup>710</sup> and extends the scope of fundamental human rights to all migrants, both in regular and irregular situations. The Convention provides a set of international standards to address: (a) the treatment, the welfare and rights of migrant workers and members of their families and, (b) the obligations and responsibilities of States involved.

The Convention seeks to establish minimum standards of protection in legal, political, economic, civil, social and cultural rights for migrant workers and members of their families. It also seeks to address those States that lack national standards of human rights protection and encourages them to bring their legislation in closer harmony with universal standards set forth in the Convention.

<sup>704</sup> In this respect, the step taken by the MoPO in its draft Amendments to the Law on Foreigners which introduces the definition of stateless persons is a positive one. See above, in this section 'Definitions'.

<sup>705</sup> Refer to the section in this report concerning travel documents and identity cards.

<sup>706</sup> From the meetings held with representatives of the State Labour Inspectorate, the Social Insurance Institute and the Directorate of Social Insurance, it was learned that although provisions existed (see Art. 7 of the Law on Social Insurance and Regulation on Social Insurance, 2001) these organs have not specifically focused their work on the obligations of Albanian or foreign employers to insure foreigners.

<sup>707</sup> In practice, there have not been applications by stateless persons to acquire Albanian citizenship. A considerable number of applications have come from Albanian citizens who want to relinquish their Albanian citizenship to gain another one, or to reacquire the Albanian citizenship on failure to obtain the requested citizenship.

<sup>708</sup> The Convention was adopted on 18 December 1990 by the General Assembly and came into force on 1 July 2003. To date (20 January 2004), it has been ratified or acceded to by the following 24 States: Azerbaijan, Belize, Bolivia, Bosnia and Herzegovina, Burkina Faso, Cape Verde, Colombia, Ecuador, Egypt, El Salvador, Ghana, Guatemala, Guinea, Kyrgyzstan, Mali, Mexico, Morocco, Philippines, Senegal, Seychelles, Sri Lanka, Tajikistan, Uganda and Uruguay.

<sup>709</sup> Information obtained from the Department of Migration, at the Ministry of Labour and Social Affairs.

<sup>710</sup> The process covered by the MWC includes preparation for migration, departure, transit, stay and work in another country, and return to their state of origin or habitual residence.

## 2. Gap Analysis between the Albanian Legislation and the MWC

The MWC establishes rights both for undocumented migrants and for those in a regular situation. Part III deals with the rights of all migrant workers and members of their families, including those which are **undocumented** or in an **irregular** situation,<sup>711</sup> whereas Part IV stipulates the rights applicable only to those who are **documented** or in a **regular** situation.<sup>712</sup> The human rights laid down in Part III of the MWC are a consolidation of the basic human rights in the International Bill of Human Rights<sup>713</sup> and other international human rights instruments. Albania has ratified the following instruments that are automatically incorporated into Albanian law:<sup>714</sup>

- International Covenant on Civil and Political Rights (1966) (ICCPR).<sup>715</sup>
- International Covenant on Economic, Social and Cultural Rights (1966) (ICESCR).<sup>716</sup>
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) (CAT).<sup>717</sup>
- Convention on the Rights of Child (1989) (CRC).<sup>718</sup>
- International Convention on the Elimination of All Forms of Racial Discrimination (1966) (CERD).<sup>719</sup>
- Convention on the Elimination of All Forms of Discrimination against Women (1979) (CEDAW).<sup>720</sup>
- European Convention on Human Rights (1950).<sup>721</sup>
- ILO Forced Labour Convention (C29) (1930).<sup>722</sup>
- ILO Abolition of Forced Labour Convention (C105) (1957).<sup>723</sup>
- Convention relating to the status of Refugees (1951) and its Protocol (1967).<sup>724</sup>
- Conventions relating to the Status of Stateless Persons (1954) and the Convention on Reduction of Statelessness (1961).<sup>725</sup>

On acceding to the MWC, many of Albania's obligations will merely relate to the full implementation of basic human rights principles, already applicable in Albania.<sup>726</sup> With regard to basic human rights of migrant workers undocumented or in an irregular situation and their families, legislative reform may be required in order to implement the MWC. The Constitution states:

*“The fundamental rights and freedoms and the duties contemplated in this Constitution for Albanian citizens are also valid for foreigners and stateless persons in the territory of Albania, except for cases when the Constitution specifically attaches the exercises of particular rights and freedoms with Albanian citizenship. (Article 16, paragraph 1).”*

However, it is not clear whether foreigners in an irregular situation are covered by this provision as it does not expressly state whether it includes or excludes an application to foreigners illegally residing in Albania. Furthermore, it is not clear whether a provision concerning “foreigners” in general in the statutory acts of Albania applies to migrant workers, unless it expressly states so.<sup>727</sup> The only provision found in Albanian laws, which expressly provides for the rights of foreigners who are not lawfully residing in Albania, is Article 2 of the Law of the People's Advocate which states that the Law applies to protect the rights of all foreign-

<sup>711</sup> Arts. 8-33, MWC.

<sup>712</sup> Other Parts deal with the Scope and Definitions, Non-discrimination with Respect to Rights, Provisions Applicable to Particular Categories of Migrant Workers and Members of their Families, Promotion of Sound, Equitable, Humane and Lawful Conditions in Connection with International Migration of Workers and Members of their Families, Application of the Convention, General Provisions and Final Provisions.

<sup>713</sup> The International Bill of Human Rights includes the following UN acts: The Universal Declaration of Human Rights of 1948, the International Covenant on Economic, Social and Cultural Rights of 1966 (in force since 1976) and the International Covenant on Civil and Political Rights of 1966 (in force since 1976).

<sup>714</sup> According to the Constitution of Albania, international treaties ratified by Albania are a part of Albanian legislation and have a status higher than the statutory acts and lower than the Constitution. (Art. 116)

<sup>715</sup> Ratified on October 4, 1991

<sup>716</sup> Ratified on October 4, 1991.

<sup>717</sup> Ratified on May 11, 1994.

<sup>718</sup> Ratified on February 27, 1992.

<sup>719</sup> Ratified on May 11, 1994.

<sup>720</sup> Ratified on May 11, 1994.

<sup>721</sup> Ratified on October 2, 1996.

<sup>722</sup> Ratified on June 25, 1957.

<sup>723</sup> Ratified on February 27, 1997

<sup>724</sup> Ratified on August 18, 1992.

<sup>725</sup> Ratified respectively in September 22/ October 7, 2003.

<sup>726</sup> With regard to the periodic reports required by ICCPR, ICESCR, CRC, CERD, CEDAW and CAT, Albania has submitted only one report to Committee of CEDAW in 2003.

<sup>727</sup> The LoF defines foreigners as persons who according to Albanian legislation do not have Albanian citizenship (Art. 2 LoF). In so far, there exists no official interpretation as to whether this definition includes both documented and undocumented migrants. Moreover, to date there exists no case law by Albanian courts on this issue. It is however evident that the fundamental rights and freedoms envisaged in the CoA, such as the right to life, the freedom from torture, the right to fair and public trial etc., are applicable because of their nature to all persons, including undocumented migrants. The rest of the rights are regulated by specific laws and depend to a great extent on the legality of entrance and stay. See below for more details.



ers, refugees and stateless persons within the territory of Albania.<sup>728</sup> Therefore, Albania might need legislative reform in order to accede and be fully in compliance with the MWC.

The analysis in this section commences from Part II of the MWC (“Non-discrimination with respect to rights”) which applies throughout the whole migration process and then considers each stage of the migration process: from “entry”, “residence”, “employment”, “integration/family reunion” to “return.”

### 3. Principle of Equality and Non-discrimination

As mentioned above, the Constitution of Albania guarantees the fundamental rights and freedoms provided in the Constitution to foreigners in Albania.<sup>729</sup> It also states that all are equal before the law and prohibits discrimination on certain grounds if reasonable and objective legal grounds do not exist.<sup>730</sup> Therefore, equality between Albanian nationals and migrant workers, at least those in a regular situation,<sup>731</sup> with respect to fundamental rights and freedoms is guaranteed in the Constitution, except when the Constitution specifically attaches particular rights and freedoms to Albanian citizenship (such as the right to vote or be elected).

The MWC guarantees all migrant workers fundamental rights and freedoms, including those in an irregular situation. Therefore, one of the gaps between the Albanian legislation and meeting the requirements of the MWC lies in the guarantee of fundamental rights and freedoms for migrant workers in an *irregular situation*. There is also a gap concerning migrant workers in a regular situation with regard to equality of treatment with nationals in relation to access to housing, vocational training guidance and facilities, cultural life and social services,<sup>732</sup> which are not guaranteed in the Constitution.

With regard to the prohibited grounds of discrimination, the MWC obliges states parties to respect and ensure the rights of all migrant workers and their families provided in the convention without distinction of “any kind.”<sup>733</sup> Therefore, the main gap concerning the principle of non-discrimination exists in discrimination on the grounds not enumerated in the Albanian Constitution, such as nationality, age, and marital status.

### 4. Entry

The MWC provides detailed provisions concerning the right to be informed of the rights of migrant workers and their families, arising out of the MWC and conditions applicable to their admission to a state.<sup>734</sup> However, no provision has been identified in the Albanian legislation which establishes public services abroad in order to disseminate information concerning the rights of migrant workers or conditions of their admission in Albania.<sup>735</sup> To comply with the MWC, a new Instruction by the Ministry of Foreign Affairs may be needed, requiring consular offices and diplomatic missions abroad to disseminate general information concerning the rights of migrant workers and the conditions of admission to Albania.<sup>736</sup> To facilitate the dissemination of regularly updated information, it is indispensable to strengthen the links between the Ministry of Foreign Affairs and diplomatic missions abroad. An effective link must also be created among all the agencies concerned, particularly the Ministry of Public Order and the Ministry of Labour and Social Affairs, by means of the modernization of communication technology.<sup>737</sup>

<sup>728</sup> Law No. 8454, 4 February 1999.

<sup>729</sup> Art. 16 (1), Constitution. The limitation to these rights and freedoms may be established only by law and for public interest or for the protection of the rights of others. The limitation should also be in proportion with the situation, may not infringe the essence of the rights and freedoms, and may not exceed the limitations provided for in the European Convention on Human Rights. (Art. 17, Constitution).

<sup>730</sup> Article 18 of the Constitution states: “1. All are equal before the Law. 2. No one may be unjustly discriminated against for reasons such as gender, race, religion, ethnicity, language political, religious or philosophical beliefs, economic condition, education, social status or ancestry. 3. No one may be discriminated against for reasons mentioned in paragraph 2 if reasonable and objective legal grounds do not exist”.

<sup>731</sup> Supra, no. 729

<sup>732</sup> Law on the Assistance and Social Care applies only to Albanian citizens and their families. Persons who are not Albanian citizens can be entitled to assistance and social care after they have lived for more than 10 years in Albania. (Art. 1, Art. 4 (2), Law No. 7710, 18 May 1993).

<sup>733</sup> Art. 7 MWC.

<sup>734</sup> Art. 33, MWC. Article 37 also refers to the same issue concerning migrant workers who are documented or in a regular situation. This article provides the right to be “fully” informed by the State of Employment or the State of Origin of “all” conditions concerning admission stay and remunerated activities, requirements and authorities to address modification of conditions.

<sup>735</sup> According to the Law on the Exercise of Consular Functions, the Albanian diplomatic or consular representations abroad have to support the collaboration between the hosting country and Albania aimed at the expansion of economic relations, progress, transportation, culture, science and rights: Art. 1, Art. 10, Law No. 8372, 9 July 1998. However, no detailed provisions concerning providing information to foreigners or migrant workers have been identified.

<sup>736</sup> By publishing a leaflet in the most common languages of the country in which the information is being sought.

<sup>737</sup> According to information obtained from the Ministry of Foreign Affairs, Albania is interested in the creation of a more sophisticated system, which links all the embassies with the Ministry on line. The realization of this idea is still far off and depends entirely on financial resources that are currently not available. According to MoLSA, exchange of information with other ministries takes place upon request on ad hoc basis, or if it is needed.

Regular exchange of information between diplomatic missions at an international level is also required, in particular concerning migrant workers that transit Albania. As a state of transit, Albania would be obliged to provide migrant workers, both in regular and irregular situations, with their rights and the conditions of their admission under the MWC.<sup>738</sup> However, according to the Ministry of Public Order, the exchange of information is still based on bilateral agreements<sup>739</sup> or through the officers seconded in Albanian embassies in Italy, Greece and Turkey. Therefore, significant improvements in the field of information exchange both within the Albanian Government and among all relevant authorities abroad is required in order to provide appropriate information to migrant workers before their departure.

## 5. Residence

The MWC provides that the state of employment shall issue authorization of residence for at least the same period of time as their authorisation to engage in remunerated activity, where separate authorizations to reside and to engage in employment are required.<sup>740</sup> Albania has a dual-permit system, but an effective link between the periods of the two authorisations has not been established either in legislation or in practice.<sup>741</sup>

In Albania, MoPO is responsible for issuing residence permits and MoLSA for work permits. According to the information obtained, there is insufficient collaboration and communication between the two Ministries at the operational level.<sup>742</sup> Considering the fact that the Albanian migration legislation fails to establish a clear procedure of work permits and residence permits with a clear link between the two authorisations, it is unlikely that other provisions of the MWC are implemented effectively under the current regime.<sup>743</sup> Collaboration between MoLSA and MoPO in their work concerning residence permits and work permits needs to be significantly strengthened in order to ensure more effective coordination of the two authorisations for migrant workers, in order to comply with the provisions of the MWC.

With regard to the right to be temporarily absent from the State of employment (Article 38, MWC), no serious gaps have been identified. The obligation of the state of employment under the MWC is merely to “make every effort” to permit migrant workers and their families to leave the country without any effect on their authorisation to stay or to work.<sup>744</sup> The Law on Foreigners of Albania permits a foreigner to stay out of Albania for a prolonged period of time, if they make a request in advance at the local immigration authorities.<sup>745</sup>

## 6. Employment

### Rights provided in the MWC for all migrant workers

The MWC states that all migrant workers, both in a regular and irregular situation, shall enjoy treatment not less favourable than that which applies to nationals of the state of employment with respect to remuneration, other conditions of work and other terms of employment.<sup>746</sup> It also obliges states parties to recognize the right of all migrant workers, including irregular migrant workers, and their families to freely join any trade union and other associations, to take part in meetings and activities of such associations and to seek aid and assistance from them.<sup>747</sup> With respect to social security, all migrant workers, including irregular migrant workers and their families, shall enjoy the same treatment granted to nationals in the State of employment.<sup>748</sup>

The right to employment, the right to join a trade union, and the right to social security, which are guaranteed for all migrant workers in the MWC, are also guaranteed by the Albanian Constitution both for Albanian

<sup>738</sup> Art. 33, MWC.

<sup>739</sup> As of October 2003, such an agreement has only been signed with Montenegro and UNMIK in Kosovo. There is an ongoing negotiation with Macedonia.

<sup>740</sup> Article 49(1), MWC.

<sup>741</sup> The only provision found in relation to the link between work permits and residence permits is Article 5 of the Law on Foreigners, which provides that the request for residence permits “can be refused” to the foreigners in cases where they work without work permission.

<sup>742</sup> As mentioned above, exchange of information between MoLSA and other institutions takes place only upon request.

<sup>743</sup> For example, prohibition to consider as irregular or loss of work permits by the mere termination of remunerated activity prior to the expiration of work permits (Art. 49 (2), Art. 51 MWC).

<sup>744</sup> The Law on Foreigners does not allow people to stay out of the Republic of Albania for more than three months for the holders of a one-year permit; six months for the holders of a five-year permit, and two years for the holders of a permanent stay permit. Art. 22 of LoF.

<sup>745</sup> Article 22 of the Law on Foreigners states that the residence permits can be withdrawn if the foreigner stays out of Albania for a period longer than three months for a holder of a one year residence permit, six months for a holder of a five year residence permit and two years for a holder of a permanent residence permit. It also states that the foreigner can ask for a longer timeframe to stay out of the country, if they make a previous request at the local immigration authorities.

<sup>746</sup> Art. 25, MWC. “Other conditions of work” are defined as “overtime, hours of work, weekly rest, holidays with pay, safety, health, termination of the employment relationship and any other conditions of work which, according to national law and practice, are covered by this term.” “Other terms of employment” are defined as “minimum age of employment, restriction on home work and any other matters which, according to national law and practice, are considered a term of employment.”

<sup>747</sup> Art. 26, MWC.

<sup>748</sup> Art. 27, MWC.

citizens and for foreigners.<sup>749</sup> The Labour Code further provides rights related to employment including the freedom to join a trade union.<sup>750</sup> However, it is not clear whether the Labour Code protects migrant workers in an irregular situation.<sup>751</sup>

The Law on Social Insurance explicitly states that it provides protection to certain categories of foreigners who work in Albania.<sup>752</sup> The law provides for compulsory insurance, to cover sickness, maternity, old age, disability and the loss of the breadwinner, employment accidents, occupational diseases and unemployment.<sup>753</sup> Family members of foreigners who are not covered by compulsory insurance, but by voluntary insurance can, according to the Institute of Social Insurance, be entitled to unemployment benefit in certain cases.<sup>754</sup> In fact, the Institute was not able to provide the exact number of foreigners registered and covered by social insurance and there has been no statistical data obtained which proves that foreigners are actually covered by the social insurance.<sup>755</sup> Needless to say, no information was found to prove that social insurance or health insurance applies to migrant workers in an irregular situation.

With regard to health insurance, the Law on Health Insurance states that obligatory health care covers “foreigners employed and insured in Albania” but there are no provisions for their family members.<sup>756</sup> In addition, no examples of foreigners actually being covered by health insurance were obtained.

### **Rights provided in the MWC only for migrant workers in a regular situation**

According to the MWC, migrant workers in a regular situation and their family members are entitled to enjoy the right to “form” associations and trade unions,<sup>757</sup> and migrant workers in a regular situation enjoy the right to equal treatment with nationals in respect of protection against dismissal, unemployment benefits, access to public work schemes intended to combat unemployment, and access to alternative employment.<sup>758</sup> Furthermore, they have the right to address their complaints to the competent authorities of the state of employment if the terms of the contract have been violated by his/her employer.<sup>759</sup> In fact some of these rights are already guaranteed for “all migrant workers” and the gap is analysed only in relation to the rights, which are not mentioned in the section above.

With regard to the right to form associations and trade unions, the Constitution provides that “employees”, (without limiting this provision to Albanian citizens), have the right to “unite freely in labour organizations for the defence of their work interests.”<sup>760</sup> If the labour code is interpreted to apply to foreigners in general, there may be no significant gap regarding the right for regular migrant workers, although there is a gap with regard to this right for family members of foreigners.

With regard to equal treatment with nationals, in the protection against dismissal, there is no gap if the Labour Code is interpreted to apply to foreigners.<sup>761</sup> The Labour Code does not expressly state equality in this regard but, according to the State Labour Inspectorate, the Labour legislation does not discriminate between nationals and foreigners.<sup>762</sup>

<sup>749</sup> Art. 16, 49, Art. 50, Art. 52, Art. 55 (2), Constitution.

<sup>750</sup> Law No. 7961, 12 July 1995. It prohibits any kind of discrimination in employment and profession (Article 9) and guarantees freedom of trade union (Article 10). Chapter XVI (Article 176 – 187) provides for creation of trade unions, freedom of trade unions and prohibition against interference.

<sup>751</sup> It merely states that “a person employed according to special law” is not subject to this code and there is no definition for the “special law”. (Art. 4, Law No 7961/1995).

<sup>752</sup> It states that “foreign citizens working in Albania for Albanian employers” and “foreign citizens working in Albania for non-Albanian employers, provided they do not enjoy other more favourable social insurance protection” are provided protection of social insurance. (Art. 7, Law on Social Insurance, Law No. 7703/1993). With regard to the latter category of foreign citizens, according to the Institute of Social Insurance, foreigners can decide themselves whether they are covered by more favourable social insurance or not.

<sup>753</sup> Art. 2, Law on Social Insurance.

<sup>754</sup> According to the Institute of Social Insurance, there are no branches which deal with family social insurance, and family insurance is covered by voluntary social insurance (Art. 3). However, there are currently no family members of migrant workers registered in the voluntary social insurance. According to the Institute, family insurance can be supplemented by unemployment benefits (Chapter V) but this benefit will be provided only after having contributed to social insurance for 12 months (Art. 53). (Hearing from the Director of the Legal Department and the Director of Public relations Directorate on 28 Aug 2003.)

<sup>755</sup> According to the Institute of social insurance, there are no limitations in the Law on Social Insurance to apply the law to foreigners. However, the Institute was not able to provide the number of foreigners registered and covered by Social Insurance, due to the fact that the statistics do not divide between nationalities. According to the State Labour Inspectorate, foreigners usually do not wish to join the social insurance scheme in Albania. However, there are some countries which do not provide social insurance for their nationals if they leave their countries for longer than a certain period of time. In addition, migrant workers who have lost their tie to their own country, such as those Chinese who have migrated permanently to Albania are covered neither by the social insurance of China nor by the social insurance of Albania, according to the same source.

<sup>756</sup> Art. 4 (1), Law on Health Insurance, Law No. 7870, 13 Oct 1994.

<sup>757</sup> Art. 40, MWC.

<sup>758</sup> Art. 54(1), MWC.

<sup>759</sup> Art. 54 (2), MWC.

<sup>760</sup> Art. 50, CoA.

<sup>761</sup> The protection against dismissal provided in the Labour code is that, for example, “in case the Labour contract is terminated without reasonable cause, the employee has the right to file a suit with the court against the employer.” (Art. 146, Labour Code).

<sup>762</sup> Hearing from the Chief of Legal Department, Institute of State Labour Inspectorate, on 16 September 2003.

There is a small gap in the equal treatment with nationals, with respect to access to public work schemes intended to combat unemployment and access to alternative employment in the event of loss of work or termination of other remunerated activity. The Law on the Encouragement of Employment explicitly guarantees equal treatment with nationals, only to certain categories of foreigners and not all migrant workers in a regular situation.<sup>763</sup>

There is no serious gap regarding the right to address his or her case to the competent authorities of the state of employment, although no information on actual cases of this happening in practice have been found. In general, the State Labour Inspectorate is responsible for inspecting work places on all occasions that are necessary to ensure the effective application of labour legislation dispositions.<sup>764</sup> In case it is necessary to undertake labour inspections, they must refer to the competent authorities, and if a violation is found, sanctions can be imposed on the employer.<sup>765</sup> The Labour Code also states that an employee has the right to file a suit against the employer in court in selected circumstances.<sup>766</sup>

It is worth mentioning here that Albania ratified the European Social Charter (revised)<sup>767</sup> in November 2002, which entered into force on January 1<sup>st</sup> 2003. However, no evidence has been identified to suggest that the provisions of the Charter ratified by Albania have been implemented effectively in practice. During the course of this study it has not been ascertained whether the Albanian legislation has been reviewed and amended accordingly, in order to fully comply with all the provisions ratified by Albania, due to the fact that not all the legal acts/bylaws are available from the Official Gazette of the Albanian legislation and also because such analysis goes beyond the scope of this study.<sup>768</sup>

## 7. Integration / Family Reunion

### Political rights

According to the MWC, states parties must consider the establishment of procedures or institutions through which account may be taken of regular migrant workers' and members of their families' special needs, aspirations and obligations and must envisage the possibility for them to have their freely chosen representatives in those institutions.<sup>769</sup> States parties must also facilitate consultation or the participation of migrant workers in a regular situation and members of their families in decisions concerning the life and administration of local communities.<sup>770</sup> Although the Albanian Constitution provides that in general, everyone has the right to organize collectively for any lawful purpose,<sup>771</sup> no other provisions have been

<sup>763</sup> Article 3, Law on the Employment Encouragement, Law No. 7995, 20 Sept 1995. It provides: "1. Each person looking for a job or a new job can ask for work and preparation for work at the National Employment Office or with its permission, at another employment office. Through the competent employment office, (s)he can register to receive the assistance (s)he is entitled to. 2. Foreign persons, and those without a citizenship, enjoy the same rights as the Albanian citizens, if there are international bilateral and multilateral agreements that give the opportunity to the competent authorities to give the right to reside and issues work permits for them. 3. The Ministry determines the conditions in which the same treatment is provided to foreigners coming from those countries that have no such agreements with the Republic of Albania. 4. Foreign persons and without a citizenship that marry Albanian citizens, enjoy the same rights as the Albanian citizens, on condition that they are residents in the Republic of Albania."

<sup>764</sup> Art. 10, Law No. 7986 of 13.09.1995 on the State Labour Inspectorate; Law No. 7995/1995 for the Encouragement of Employment."

<sup>765</sup> According to the State Labour Inspectorate, there were no cases where foreigners made a claim to the Inspectorate in breach of a work contract or labour legislation. (Hearing from the Chief of Legal Department, Institute of State Labour Inspectorate on 16 September 2003.)

<sup>766</sup> For example, "in case the labour contract is terminated without reasonable cause, the employee has the right to file a suit with the court against the employer." (Art. 146, Labour Code)

<sup>767</sup> Council of Europe, ETS No. 163, 3 May 1996. Albania made reservations to a number of articles in the European Social Charter on ratification but not to Article 19, which provides for the right of migrant workers and their families to protection and assistance. It states that: "With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Party, the Parties undertake: 1) To maintain or to satisfy themselves that there are maintained adequate and free services to assist such workers, particularly in obtaining accurate information, and to take all appropriate steps, so far as national laws and regulations permit, against misleading propaganda relating to emigration and immigration; 2) to adopt appropriate measures within their own jurisdiction to facilitate the departure, journey and reception of such workers and their families, and to provide, within their own jurisdiction, appropriate services for health, medical attention and good hygienic conditions during the journey; 3) to promote cooperation, as appropriate, between social services, public and private, in emigration and immigration countries; 4) to secure for such workers lawfully within their territories, insofar as such matters are regulated by law or regulations or are subject to the control of administrative authorities, treatment not less favourable than that of their own nationals in respect of the following matters:

A Remuneration and other employment and working conditions.

B Membership of trade unions and enjoyment of the benefits of collective bargaining.

C Accommodation. 5) To secure for such workers lawfully within their territories treatment not less favourable than that of their own nationals with regard to employment taxes, dues or contributions payable in respect of employed persons; 6) to facilitate as far as possible the reunion of the family of a foreign worker permitted to establish himself in the territory; 7) to secure for such workers lawfully within their territories treatment not less favourable than that of their own nationals in respect of legal proceedings relating to matters referred to in this article; 8) to secure that such workers lawfully residing within their territories are not expelled unless they endanger national security or offend against public interest or morality; 9) to permit, within legal limits, the transfer of such parts of the earnings and savings of such workers as they may desire; 10) to extend the protection and assistance provided for in this article to selfemployed migrants insofar as such measures apply; 11) to promote and facilitate the teaching of the national language of the receiving state or, if there are several, one of these languages, to migrant workers and members of their families; 12) to promote and facilitate, as far as practicable, the teaching of the migrant worker's mother tongue to the children of the migrant worker."

<sup>768</sup> However, if Albanian laws already comply with the European Social Charter, many rights concerning employment provided in the MWC should be already guaranteed in the Albanian laws.

<sup>769</sup> Art. 42 (1), MWC.

<sup>770</sup> Art. 42 (2), CoA.

<sup>771</sup> Art. 46 (1), MWC.

identified concerning such political rights of migrant workers and their families and, thus, there may be a gap with regard to political rights.

### **Right to housing**

Migrant workers in a regular situation and their families are entitled to enjoy equal treatment with nationals in relation to access to housing, including social housing schemes, and protection against exploitation in renting.<sup>772</sup> There are no provisions concerning access to housing in the Albanian Constitution and no information or legal provisions have been identified which comply with such rights provided in the MWC.

### **Right to medical and health care**

According to the MWC, all migrant workers and their families have the right to emergency medical care and the refusal of such medical care on the grounds of any irregularity with regard to stay or employment is prohibited.<sup>773</sup> Migrant workers in a regular situation and their families are also entitled to equal treatment with nationals in relation to access to health services.<sup>774</sup> The Constitution states that only Albanian citizens enjoy the right to health care from the State.<sup>775</sup>

The Law on Health Insurance provides that the obligatory health care system covers all persons with permanent residence as well as foreigners employed and insured in Albania.<sup>776</sup> However, the subsequent paragraph of the same article contradicts this provision when it states that obligatory health care cover: ... (b) expenses of the service to the physician or family doctor for all the citizens in Albania that have paid the contributions.<sup>777</sup> On the other hand, the Law on Health Care<sup>778</sup> provides that health care is granted to foreign citizens in accordance with the tariffs determined by the Ministry of Finance and Ministry of Health. Exception exists in relation to foreigners from those countries with whom Albania has reciprocal agreements; the foreigners that have contributed humanitarian support to Albania and special categories determined by a special decision of CoM.<sup>779</sup>

In this situation, it is necessary that Article 4 of Law on Health Insurance be amended in order to be consistent not only within itself, but also to be in compliance with the UN Conventions which requires provision of Health Care for migrant workers and their families. Also the Law on Health Care has to be amended to meet the requirement of the MWC and also to be in line with the provisions of the Law on Health Insurance. Until now, these provisions constitute a serious gap in the field of health care legislation in relation to migrant workers.

### **Right to family reunion**

The MWC obliges state parties to take appropriate measures to ensure the protection of the unity of families of migrant workers in a regular situation, to facilitate reunification with family members, and to favourably consider equal treatment to other family members on humanitarian grounds.<sup>780</sup> With regard to the authorisation of residence for family members, there is a small gap; only a family member of a foreigner who has a residence permit for more than one year is entitled to apply for a residence permit for the purpose of family reunion.<sup>781</sup> No other provisions concerning the obligation of the State to facilitate reunification were found in the Albanian legislation.

### **Rights of migrant workers' children**

According to the MWC, each child of a migrant worker, including an irregular migrant, shall have the right to a name, to the registration of birth and the right to a nationality and shall have the basic right of access to education on the basis of equality of treatment with nationals.<sup>782</sup> It also obliges states parties to pursue a policy to facilitate integration of children of migrant workers in the local school system, and in particular to teach the local language.<sup>783</sup>

According to the Law on Albanian Citizenship a child born in Albania of parents of foreign citizens lawfully residing in Albania can acquire Albanian citizenship with the consent of both parents.<sup>784</sup> Although Albanian citizens under 16 years old are not obliged to register in the register, the draft Law on the Civil Status

<sup>772</sup> Art. 43 (1)(d), MWC.

<sup>773</sup> Art. 28, MWC.

<sup>774</sup> Art. 43 (1)(e), Art. 45 (1) (c), MWC.

<sup>775</sup> Art. 55, CoA.

<sup>776</sup> See Art. 4 of Law 7870/1994. "On Health Insurance".

<sup>777</sup> See Art.4(2)(b), *Ibid*.

<sup>778</sup> See Law on Health Care No. 3766 date 17.12.1963 as amended by Law No. 7718/1993; Law No. 7738/1993; Law 8109/1996.

<sup>779</sup> See Art. 10 of Law on Health Care.

<sup>780</sup> Art. 44, MWC.

<sup>781</sup> Art. 23, LoF.

<sup>782</sup> Art. 29, Art. 30, MWC.

<sup>783</sup> Art. 45 (2), MWC.

<sup>784</sup> Art. 8, Law No. 8389, 5 August 1998.

foresees the registration of birth for Albanian citizens and for foreign or stateless persons with a permanent residence.<sup>785</sup> With regard to education, the Albanian Constitution guarantees everyone the right to education.<sup>786</sup> There is no Albanian legislation identified which aims to facilitate the integration of children in the local school system. Therefore, there is a serious gap with regard to the rights of children of irregular migrants, and also a gap regarding children of regular migrants, especially in respect of integration in the local school system.

### **Return and expulsion**

The MWC obliges states parties concerned to cooperate in the adoption of measures regarding the orderly return of migrant workers and their families to the state of origin when they decide to return, or their authorization of residence or employment expires, or when there are in the State of employment in an irregular situation.<sup>787</sup> The analysis of this issue has not been conducted due to insufficient available information in this regard.

With regard to expulsion, Article 22 MWC applies to both regular and irregular migrants and their families. It prohibits collective expulsion and a decision to expel must be taken only by the competent authorities in accordance with the law after examining each case individually. The decision shall be communicated to migrants in a language they understand and, upon request, shall be communicated in writing together with the reasons for the decision. Except where a final decision is pronounced by a judicial authority, the migrant concerned has the right to submit the reason he or she should not be expelled and to have his or her case reviewed by the competent authority, unless compelling reasons of national security require otherwise. Pending such review, the migrant concerned has the right to seek a stay of the decision of expulsion.

The Constitution prohibits collective expulsion of foreigners and permits the expulsion of individuals under the conditions specified by the law.<sup>788</sup> According to the Law on Foreigners, the Ministry of Public Order issues expulsion orders,<sup>789</sup> removal orders<sup>790</sup> and special orders for an immediate execution of the removal order.<sup>791</sup> A foreigner who is illegally in Albania is subject to a removal order and the foreigner under the order has the right to “an administrative appeal” and “an appeal before the court”.<sup>792</sup> The expulsion or removal order is suspended, within three days from the receipt of the notification, when the foreigner presents certain founded reasons.<sup>793</sup> The execution of the removal order is postponed until the ending of the procedure of the appeal.<sup>794</sup> In cases when the foreigner has not left within the timeframe and has presented a request for the revision of the order, the revision is done by the authority of the Ministry of Public Order.<sup>795</sup> Even though it would appear that the Albanian legislation is in accordance with the convention, there is still need for clear and appropriate terminology (please refer to section II, part A, point 2). Furthermore, provisions for notifying the reasons for removal or expulsion orders have not been identified in the Albanian legislation.<sup>796</sup>

### **Conclusion**

With regard to migrant workers in a regular situation, the Albanian legislation largely complies with the provisions of the MWC. Considering the fact that Albania has been working on amending and improving the Law on Foreigners, the main concern will be the actual implementation of existing provisions of the Albanian legislation. With regard to migrant workers in an irregular situation, there is need for revision and amendment of Albanian legislation. The new legislation should also foresee an appropriate structure in all the Ministries concerned to deal with migrant workers and their families illegally residing in Albania.

<sup>785</sup> Art. 1, Art. 3, Law No. 8952, 10 October 2002. The draft Law on Civil Status (updated version, July 2002) was obtained from the General Directorate of Civil Status, the Ministry of Local Governance and Decentralization.

<sup>786</sup> Art. 57, CoA.

<sup>787</sup> Art. 67 (1), MWC. With regard to regular migrant workers and their families, state parties are obliged to cooperate with a view to promoting adequate economic conditions for their resettlement and to facilitating their durable social and cultural reintegration in the State of origin. (Art. 67 (2), MWC)

<sup>788</sup> Art. 39, Constitution.

<sup>789</sup> Art. 46, Law on Foreigners.

<sup>790</sup> Art. 47, Law on Foreigners.

<sup>791</sup> Art. 52, Law on Foreigners.

<sup>792</sup> Art. 48, Law on Foreigners.

<sup>793</sup> Points 28 of Decision 439/2000.

<sup>794</sup> Art. 51, Law on Foreigners.

<sup>795</sup> Points 28 of Decision 439/2000.

<sup>796</sup> Points 27 and 28 of Decision 439/2000 mention the notification of the removal order to the foreigner but the procedure and the form of such a notification are not contained either in that provision or in the relevant articles of the Law on Foreigners.

# III GENERAL ASSESSMENTS AND CONCLUSION

## I. Legislation

### I.1. Lack of Internal Consistency within the Current Albanian Legislation

Over all there appears to be a lack of consistency within the legislative framework both within primary and secondary legislation on immigration. Concerning the main primary legislation, (which is the Law on Foreigners) certain sections seem to have been separately elaborated at different stages or by different institutions without full consideration for ensuring coherence. An obvious example of such an inconsistency is the contradiction between the provisions of the Chapter on Entrance and Exit (see Chapter II of the LoF) and the provisions on Visas and Residence Permits (see Chapter III of the LoF)<sup>797</sup> or the contradicting LoF provisions regarding the age of minors.<sup>798</sup>

Secondary acts (decisions, orders and instructions) adopted on the basis of the Law on Foreigners frequently overlap or contradict either each other, or the Law on Foreigners itself, as is the case with numerous provisions of Decision 439/2000 and Instruction 1460/2001.<sup>799</sup> Furthermore, the body of immigration legislation does not always take into account the norms and principles of other basic Albanian legal acts like the Family Code or the Civil Code, for example concerning the age of minors.<sup>800</sup> Such inconsistency constitutes a major gap since it jeopardises the proper and uniform implementation of the legal norms by the State institutions.

### I.2. Need for Transparency, Clarity and Easy Access to Information

Albanian immigration legislation in several cases fails to clearly lay down the requirements, procedures, rights and obligations, in particular regarding acceptable travel documents, visas, admission for study purposes, refusal of entry, visas and residence permits, family reunification or expulsion.<sup>801</sup> The terminology used is often too vague and subjective, rendering implementation of the relevant provisions either impossible or arbitrary. Several provisions are not accompanied by the necessary definitions, such as the ones regarding minors, visas, grounds for refusal of entry or work permits,<sup>802</sup> while several definitions are not clear, for example the “members of the family” definition or the concept of discrimination in labour matters.<sup>803</sup> Indicative enumeration is often used where an exhaustive one is required and the word “etc” is repeatedly used in legal provisions.<sup>804</sup> As a consequence, the competent authority in each case is de facto “entrusted” with unacceptably broad discretion for the interpretation of legal provisions, a task for which it is neither trained nor legally authorised. On the other hand, the foreigner is left with the risk of arbitrary decisions and the principles of justified trust in administration and of legal certainty, indispensable elements of the rule of law in any State, are not respected.

The lack of clarity often encountered in Albanian immigration legislation is, furthermore, a serious obstacle to the foreigners’ access to reliable and complete information regarding both the available legal channels of migration and the consequences of illegal migration. Access to information is moreover seriously hindered by the lack of concrete references in the body of the provisions to existing related acts further regulating a certain issue; this phenomenon is particularly frequent regarding documentation, procedural issues and refusal grounds for visas, work permits and residence permits.<sup>805</sup> Repeatedly, throughout the Law on Foreigners, the obligation of the competent authorities to adopt relevant secondary legislation on an issue is laid down.<sup>806</sup> Those secondary acts are extremely difficult to trace since not only a relevant reference is not inserted in the Law parallel to their adoption but also, according to their legal nature, they are not even published in the Official Journal.<sup>807</sup>

<sup>797</sup> For example in Art. 9 LoF and Art. 17 LoF, see Section 1.1 of the Report.

<sup>798</sup> Art. 2, 6, 9 and 66 LoF, see Section 5 of the Report.

<sup>799</sup> For example Art. 2 LoF, p. 10 DCM 439/2000, p. 20 Instruction 1460/2001, see Section 4 of the Report; Art. 74 LoF, p. 3 DCM 439/2000, p. 17 Instruction 1460/2001, see Section 6.2 of the Report.

<sup>800</sup> See Section 5 of the Report.

<sup>801</sup> See respectively Sections 1.1, 1.2, 1.3 and 3.1, 4 and 8.1 of the Report.

<sup>802</sup> See respectively Sections 4 and 5, 1.2, 1.3 and 2.1 of the Report.

<sup>803</sup> See respectively Art. 2 LoF, Section 5 of the Report and Art. 9 of the Labour Code, Section 7 of the Report.

<sup>804</sup> For example in Art. 9, 18, 51, 59, 78 and 83 LoF.

<sup>805</sup> See respectively Sections 1.2, 2 and 3.1 of the Report.

<sup>806</sup> See Art. 9, 10, 22, 26, 45, 68, 76, 77, 78 and 83 LoF.

<sup>807</sup> Access to important information concerning immigration procedures in Instructions is very problematic, since instructions are not published in the Official Journal.

### 1.3. Requirement of Compatibility with EU standards

Concerning adhesion to EU standards, the current Albanian legislation does not ensure clear and comprehensive regulation of all aspects of immigration. The fact that Albania may become a country of destination in the future as supposed to a country of origin of migration flows means that issues concerning illegal migration or the integration of immigrants, currently not widespread in Albania, will become issues of increasing relevance and therefore should be regulated for. Examples of serious gaps in the Albanian legislation vis-à-vis the EU *acquis* relate to the lack of specific or sufficient provisions on unaccompanied minors, marriages of convenience, illegal residence and employment and family reunification.<sup>808</sup>

Furthermore, although the Albanian legislation seems quite comprehensive in many areas, it still either fails to comply with specific *acquis* provisions or fails to incorporate the overall philosophy of the EU *acquis*. A combination of these two gaps exists for example concerning the Albanian legislation on admission for employment and self-employment or visa legislation, while long-term residence is a clear example of a field where the overall philosophy of the *acquis* is not reflected.<sup>809</sup> The partial adoption of only some of the *acquis* provisions or principles in a certain area is a typical gap in the Albanian legislation on immigration. Such selective and fragmented approximation leaves a serious gap, as isolated provisions interpreted and implemented out of their context, may result in an implementation practice entirely different from that of the EU Member States.

### 1.4. Need to Implementation Ratified International Instruments

Albania has made some steps forward to adapt to the international standards that protect migrant workers and stateless persons. It has already ratified the two Stateless Conventions, and as emphasised by the Draft Action Plan on Free Movement of People, plans to ratify the ILO Migrant Conventions and the International Convention on the Protection of the rights of migrants and their families within the year 2006. Without doubt, these objectives underline the commitment of Albania to guarantee and ensure the protection of the migrant/stateless/foreigners rights.

However, the adoption of these instruments must not be considered as a simple act of signature and ratification by the Parliament. It includes and requires a set of actions that Albania must undertake to effectively fulfil and ensure the objectives laid down by these documents. Measures must be taken not only in respect to implementation but primarily in respect to legislation. This is because the current legislative framework does not fully meet the objectives set by the international instruments, especially in relation to integration of migrant workers and stateless persons. Furthermore, it is not coherent with the principle of equal rights with nationals underlined by the conventions in relation to the basic rights of the individual such as the right to social and health security, education and employment, housing and social assistance, ID and travel documents.<sup>810</sup> As a consequence, the adoption of these instruments by Albania creates a gap and inconsistency between the national legislation which is the Law *de facto* applied by the officials in Albania, and the International Conventions ratified, which *de jure*, as envisaged also by the Constitution<sup>811</sup> must have primacy over the internal law that contradicts them.

### Recommendations

Albanian immigration legislation should be rendered clearer, more accurate and consistent, more transparent and accessible to its users and, thus, more enforceable. To achieve this, the Law on Foreigners, as the backbone of Albanian immigration legislation, should be redrafted according to the recommendations contained in this Report. Fundamental legal principles, such as transparency and legal certainty, have to be reflected both in the structure and in the content of the Law and of its by-laws.

The recommended changes to the Law on Foreigners and, furthermore, to the current institutional framework for immigration in Albania affect the majority of the provisions of the Law and of its by-laws and, in some cases, even involve the introduction of altogether new principles. It is therefore only consistent and appropriate for such extensive reform to take place through the abrogation of the current Law and of the secondary legislation deriving thereof and through the drafting of a new Law according to the findings, conclusions and recommendations of this research and analysis. This approach is also consistent with the guidelines regarding the issue of amending versus drafting a new law, contained in the 2003 "Law Drafting Manual incorporating a Guide to the Legislative Process in Albania."<sup>812</sup>

<sup>808</sup> See respectively Sections 5, 6.3, 6.1, 6.2 and 4 of the Report.

<sup>809</sup> See respectively Sections 2.1, 2.2, 1.2 and 3.2 of the Report.

<sup>810</sup> See for more Part. B - International Standards in relation to Stateless Persons and Part. C.

<sup>811</sup> See Art. 116 of CoA.

<sup>812</sup> Chapter 1.3.4 of the 2003 "Law Drafting Manual incorporating a Guide to the Legislative Process in Albania", which was prepared by a Joint Working Group consisting of representatives of the Albanian Parliament, Cabinet of Ministers, Ministry of Justice, Tirana Faculty of Law and the Council of Europe's Secretariat, assisted by the independent expert Professor St. John Bates (UK).



The new Law on Foreigners should be drafted in accordance with the principles and guidelines contained in the 2003 Manual and should be complemented with only the necessary and appropriate secondary legislation. Overcharging a Law with excessive secondary legislation should be avoided, in the sense that a serious effort should be made to regulate all similar and closely related legal issues in the same legal act and not spread them over a series of overlapping special acts, as often happens due to bad timing or lack of coordination between the competent authorities. Attention should be paid to ensuring coherence with the rest of the Albanian legislation in force, including the international instruments ratified by Albania.

Concerning compatibility with EU standards, Albanian immigration legislation should be approximated to these standards as far as possible, taking into account that provisions have to be realistic, enforceable and consistent with the Albanian reality. As a first step major incompatibilities with the EU *acquis* should be removed and legislation should be adopted in the areas covered by the *acquis* but currently not regulated by the Albanian legislation.

The main principles governing the EU immigration *acquis* should govern Albanian immigration legislation, in particular transparency, facilitated access to information, clear and simple application and assessment procedures, differentiation of rights according to stay, respect for the domestic labour market situation and for the principle of the economic benefit of self-employment and enhanced action against illegal migration. Such steps are essential to ensure that the basis is laid down for full approximation to be achieved in due time with the least cost both in terms of resources and time. The role of the Department for Approximation for EU Legislation should be primary in this process.

Regarding international standards, Albania must immediately amend its current legislative framework which contradicts the conventions already adopted so as to avoid the inconsistencies within its internal legislation. Secondly, it must amend when feasible the laws that are not in compliance with international instruments it strives to adopt. In particular, it must ensure basic rights to migrant workers and stateless persons and their families, such as the right of social insurance, health care, housing, and education. Local and central governmental structures must grant assistance to migrants/stateless persons in relation to employment opportunities. In addition, administrative assistance must be given to the stateless persons in relation to access international structures to which they cannot resort directly<sup>813</sup> and provide them with identity and travel documents. Albanian Diplomatic and Consular Representatives must provide adequate assistance and service to the prospective migrant workers and must also offer to stateless persons services similar to the services offered to nationals.

## **2. Institutional framework and administrative capacity**

In addition to the frequently stated weakness of the Albanian public administration,<sup>814</sup> the following principal gaps in the institutional framework and the administrative capacity in the field of immigration management are relevant:

### **2.1. Lack of regular Collaboration and Unbalanced Allocation of Resources between Relevant Institutions in Migration Management**

There is a serious lack of strategic collaboration and regular informational flows between the line ministries and especially between the three most relevant in this field: MoPO, MoFA and MoLSA.<sup>815</sup> MoLSA has a Migration Directorate but the other two key ministries in this field do not have a similar authority within their structure; their migration competences are dispersed between different Directorates. Mechanisms for regular exchange of information and regular consultation and coordination meetings between the three ministries currently do not exist. Moreover, the institutional imbalance between them renders their collaboration more complicated. As a consequence, there appears to be a lack of clear policy direction at inter-ministerial level. This can be considered as one of the most serious gaps in the immigration management as it jeopardises the consistency of the National Migration Strategy, which the Albanian institutions should elaborate together, and later on the efficient implementation of that Strategy.

### **2.2. Deficit in Administrative Capacity**

There is a noticeable deficit of administrative capacity in the institutions assigned to implement the immigration legislation. It stems from the insufficient human and financial resources allocated to the relevant

<sup>813</sup> See in this Report, Part. B - Administrative Assistance.

<sup>814</sup> See Stabilisation and Association Report 2003 for Albania, (COM (2003)139 final).

<sup>815</sup> For instance both MoLSA and MoPO have launched separate drafts on amendment of the Law on Foreigners with limited coordination between them. Furthermore, MoPO has elaborated its draft focusing mainly on the part of the law concerning the visas without participation of the representatives of MoFA.

structures. The training of the staff in many cases is minimum and not always relevant. The adverse effect of the inadequate training on the implementation is aggravated by the lack of detailed manuals or guidebooks, which could assist in combating the insufficient knowledge and the limited experience of the personnel.

### **2.3. Lack of Comprehensive System and Mechanisms for Data Collection, Exchange and Analysis**

Data gathered and stored by the relevant state institutions is not collected, collated, analysed and distributed according to common principles. The lack of reliability of data and the statistics raises serious concerns, as it is one of the bases on which the entire migration policy should be elaborated.

## **3. Recommendations**

### **3.1. Institutional Framework**

#### **Ensure overall consistency within the institutional framework on migration**

To attain overall consistency within the institutional framework on migration each of the relevant Ministries dealing directly with migration issues, including MoPO, MoLSA and MoFA should have a central authority to manage migration with relevant ties between them. Suggested division of roles and of competencies are as following:

#### **The role of the Ministry of Public Order**

Taking into account the experience of EU Member States and the candidate countries in which the MoPO/Mol is the primary authority dealing with migration,<sup>816</sup> and to be consistent with the role and competence of the MoPO as the main central authority responsible for migration and asylum in Albania, an entity such as a Migration and Asylum Directorate should be established within the structure of MoPO, potentially independently of the State Police and Public Order Police and on a par with other administrative directorates.<sup>817</sup> The new Directorate would have greater administrative functions including processing of documentation etc, as opposed to mainly police functions of the institutions under the State Police to avoid overlapping with the already existing law-enforcement structures in the Ministry. The new directorate should encompass the relevant units responsible for migration currently existing in the MoPO; these units are the Sector for Passports and Foreigners in the General Directorate of the Public Order Police, and the Office for Refugees. The formal act of establishment of the new immigration institution should be supported by the allocation of adequate human and financial resources.

#### **The role of the Ministry of Labour and Social Affairs**

Taking into account that MoLSA is responsible for all labour-related aspects of migration, the capacity of its current Migration Directorate should be enhanced with appropriate training in migration law, policy, and practice and the human and financial resources allocated to it should be reviewed to ensure their adequacy for the fulfilment of its broad and complex mandate. The division of competencies and the collaboration and coordination procedures between the current Migration Directorate, and more specifically its Immigration Department, and the local Employment Offices and National Employment Service should be made clearer and more efficient.

#### **The role of the Ministry of Foreign Affairs**

The competences of MoFA in the field of migration should not be limited to the administration of visas and of the documents for the entry and stay of diplomatic personnel and to the coordination with the diplomatic missions of Albania abroad. MoFA should be the authority dealing with migration related issues at an international level. MoFA's primary role should be to represent Albania in international forums dealing with migration and it should be responsible for international co-operation/aid in this field. Moreover, it should be responsible for coordinating both the internal and the international exchange of information on the implementation of international treaties ratified by Albania and for the final reporting on the implementation of those international treaties which establish regular reporting as an obligation of the Parties. In this respect, a structure for monitoring the implementation of the international conventions ratified must be immediately established within the Ministry. This structure would become an important source of information whether the International Instruments are *de facto* respected by Albanian Authorities, which are the

<sup>816</sup> Examples of states with such a structure are Austria, Belgium, the Czech Republic, Hungary or Spain. In these States, the Ministry of Public Order or the Ministry of Interior is responsible for the overall formulation and coordination of the government policy on migration and for the overall management of migration population. For more information see: [www.bmi.gv.at](http://www.bmi.gv.at), [www.help.gv.at](http://www.help.gv.at), [www.ibz.fgov.be](http://www.ibz.fgov.be), [www.mvcr.cz](http://www.mvcr.cz), [www.bmbah.hu](http://www.bmbah.hu) and [www.mir.es](http://www.mir.es).

<sup>817</sup> For example in Greece, Italy and the UK the relevant institution is independent from the State police; please refer to the relevant websites of the Ministry of Interior, and Home Office respectively.

main factors that impede their implementation in practice and would also provide guidelines on the further steps to be taken.

The division of the Legal, Treaties and Consular Department in a Legal and Treaties Department and in a separate Consular Department was already a positive step in that direction. It could be further recommended that the Consular Department be converted into a Consular and Migration Department.

### **Other relevant Ministries and Inter-Ministerial collaboration**

Other Ministries and public authorities, including central, regional and local, with competence in or influence on migration issues should designate focal points within their structures with clear mandates and obligations in the field of migration. Such process could be preceded by a revision and re-identification of the role of each authority in the management of migration flows.

A body regularly bringing together representatives from ministries and institutions involved in migration should be established. Such a joint body should meet at regular intervals of no more than six months and also on an ad hoc basis at the petition of one its members when specific circumstances demand it. It should be presided by the representative of the MoPO, MoLSA and MoFA on a rotational basis. Its tasks should be to ensure and monitor the regular exchange of information between its member institutions, to ensure that necessary consultations between them take place prior to any initiative in the field of immigration, and, in general, to ensure overall co-operation and co-ordination among them, both horizontally, that is concerning all aspects of immigration policy, and vertically, among the central, regional and local institutions. The ultimate goal of such a coordination body should be to actively involve all public stakeholders in the field of immigration in the actual management of immigration and to achieve and maintain consensus on the direction of that management.<sup>818</sup>

The inter-institutional body envisaged in the previous paragraph should also act as a secretariat preparing the meetings of and providing overall support to an Inter-ministerial Committee, bringing together all the Ministers with competence in the field of migration. The Inter-ministerial Committee, presided by the Prime Minister, should be ultimately responsible for the definition of the national immigration policy. On 27/10/2003 an Order of the Prime Minister was adopted on the "Creation and Functioning of the Inter-ministerial Committee on Migration", thus opening the way for coordination between Ministries to take place.<sup>819</sup>

The Consulting Committee for Foreigners envisaged in the Law on Foreigners but yet not created should be established.<sup>820</sup> Its size and composition should be such as to ensure participation of an appropriate number of representatives of the legally constituted associations of immigrants existing in Albania, of migration-related non-governmental organisations, academic institutes, trade unions, employers' associations and experts from the legal field. The Committee should have consultative, informational and advisory functions in the area of migration. More concretely, its functions should include the collection and analysis of information regarding migration both on a national and an international level, the monitoring and evaluation of the implementation of migration legislation in Albania, the undertaking of research on migration issues, the formulation of proposals and recommendations based on the information collected and the research conducted, and the elaboration and publication of reports and policy papers. It should furthermore be responsible for awareness-raising/information/educational campaigns in the field of migration (brochures, films, courses, and workshops targeted both at immigrants and at the broader Albanian public) and for the combating of xenophobia and racism.<sup>821</sup>

Finally, an independent body for the promotion of equal treatment of all persons should be established according to the requirements of the relevant EU Directive.<sup>822</sup> The Directive refers only to equal treatment in relation to ethnic or racial origin but the mandate of such a body could be broader, including other grounds of discrimination. This integrated approach is considered advantageous in its potential for ensuring legal coherence, consistency and clarity regarding rights. Another benefit is that it gives the body the

<sup>818</sup> By the Prime-Ministerial Order No. 150/2003 an Inter-Institutional Working Group on Drafting the National Strategy on Migration has been established; see also below, "The Development of a National Strategy on Migration". As the Order is currently phrased, it is not clear whether this structure would be a permanent one or will function until the National Strategy of Migration has been drafted. However, it might serve as the basis for the establishment of a permanent inter-institutional migration body with the tasks and competencies mentioned in this paragraph.

<sup>819</sup> See below, "The Development of a National Strategy on Migration".

<sup>820</sup> Art. 56, 72 and 83 LoF.

<sup>821</sup> See for reference similar bodies in other European countries, such as the National Coordinating Body at the Labour and Economics Council (CNEL) in Italy, the Permanent Immigration Research Group (OPI) and the Forum on the Social Integration of Immigrants in Spain, the Committee for the Preparation and Realisation of Governmental Policy of the Czech Republic in the Field of Immigrant Integration and Development of Relations between Communities and the Czech Committee of Foreigners' Rights or the Integration and Development Working Group in Hungary.

<sup>822</sup> Council Directive 43/2000.

necessary influence to have an impact and also lessens any perceived hierarchy of the different grounds of discrimination.<sup>823</sup> The similar bodies existing in the EU Member States should serve as examples for the establishment of this body.<sup>824</sup>

### **3.2. Administrative Capacity**

#### **Address the deficit in the administrative capacity**

The constant, coherent and well-structured training both of administrative personnel dealing with migration and of the police and the judiciary is a principle requirement for the efficient and sustainable immigration management in Albania.<sup>825</sup> The existing training structures for the administration, the police and the judiciary must include in their curricula training on migration issues and where relevant, they must be strengthened both with financial and with human resources and must provide training on migration issues. The task of these structures should not be limited to providing regular training using their own human resources and expertise but should also include coordination and organisation of training by external national and international experts. Focal points for training purposes should be designated in all public institutions, the police and the judiciary in order to identify training needs and to evaluate the results of the training undertaken both for internal purposes and also for coordination with the relevant training institutions. Such a mechanism of exchange of information, coordination and follow-up between the training institutions and the beneficiaries of the training would permit a joint and thus more realistic setting of training priorities, planning and design of training programmes. It would also allow for the constant revision and improvement of training according to its short and long-term results and would thus render it more useful and suitable to the actual needs of the different beneficiaries.

#### **Create a comprehensive system and mechanisms for data collection, exchange and analysis**

A comprehensive and efficient system for the registration of all data regarding foreigners should be put into place. This information system should consist of a central database for foreigners under MoPO and should be accompanied by an authorisation check system through which all the different user groups (other ministries, public central, regional and local institutions, diplomatic missions) involved in migration will have access to those fields of the database that are related with their competencies. Access should be granted both for the purposes of information sharing and status-checks and for the registration of all information related to foreigners, that is regarding entry, stay, study, labour and social situation, family situation, long-term resident status and return, removal and readmission. This information system should permit analysis and elaboration of statistics for migration.

Currently, an information system for the registration of all incoming and outgoing flows of people and vehicles into and from Albania is being put in place under MoPO and is planned to be completed by 2006.<sup>826</sup> This database could serve as the basis for the whole information system for foreigners provided all migration related users are given the possibility to access it and register foreigner-related data therein. It goes without saying that the putting in place of such databases should go hand in hand with the relevant training of the all its future users.

## **4. The development of a national strategy on migration**

During the drafting of this report, the European Community funded a project to design the National Strategy on Migration. Within the framework of this strategy a legal framework to enable the Strategy has been put into place. Thus, two Prime-Ministerial Orders have been adopted which envisage the establishment of an Inter-Ministerial Committee on Migration and an Inter-Institutional Working Group on Drafting the National Strategy on Migration. The Inter-ministerial Committee on Migration is chaired by the Prime Minister and will serve as a Consultative Body for the Council of Ministers and will inter alia examine the proposals for legal and institutional amendments, policies and strategies on migration and will examine or propose establishment and strengthening of the migration related structure on a regional and local level. While, an Inter-institutional Working Group on Drafting the National Strategy on Migration, comprised by experts of the relevant Ministries and Institutions, shall analyse the migration situation in Albania, propose reforms in migration issues and by definition, draft the National Strategy on Migration. In conjunction with the recommendations outlined in this report, it will be the work of the inter-institutional working group to identify the further needs for capacity building, training and other institutional re-structuring.

<sup>823</sup> Examples of bodies with a mandate for various discrimination grounds can be found in Ireland (Equality Authority and Office of the Director of Equality Investigations (ODEI)), the Netherlands (Equal Treatment Commission), Belgium (Centre for Equal Opportunities and Opposition to Racism) and the UK (Equality Commission for Northern Ireland).

<sup>824</sup> For more details on the mandate and status of this body see in this Report "Gap Analysis", Part A, Section 7. "Equality / Non-Discrimination", Recommendations.

<sup>825</sup> The training of public administration in Albania is undertaken by the Training Institute for Public Administration (ITAP), the judiciary is trained by the Albania Magistrates School (AMS) and the police is trained by the Police Academy.

<sup>826</sup> This project is carried out by the US-funded International Criminal Investigative Training Assistance Programme (ICITAP) based in Albania.

## 5. Conclusion

It has been the purpose of this report to identify the legislative and institutional practices concerning immigration into Albania, and in particular to ascertain to what extent the legal and institutional framework in place meet EU immigration standards. Since the precise extent to which Albania would have to meet those standards in order for the Stabilisation and Association Agreement to be signed has not yet been defined, the comparative analysis in this Report covers the whole current immigration *acquis* of the EU.

Within the scope of this report analysis has been conducted into each of the phases of the *immigration* process from entry to return, as per the standards in EU and international law, in particular with regard to the EU *acquis*, but also with regard to the UN Convention on the Status of Stateless Persons and the UN International Convention on the Protection of the rights of all migrant workers and members of their family.

Within the context of this report it has been established that the Albanian legislation in the field of immigration does not yet meet all requirements of the current EU *acquis*, which as far as possible is the required benchmark for future accession to the European Union. The areas in which particular significant improvement is required have been highlighted in the previous section, and recommendations have also been given as how to improve these shortcomings. The timeframe in which these issues should be addressed should be dealt with within the framework of the development of the National Strategy so that the involvement of all the necessary relevant institutional partners can be ensured and as such goes beyond the scope of this report.

Nevertheless, as it has also been stressed that as of yet Albania is not currently a Candidate country for European Union accession, and as such caution should be taken in committing Albania to full adoption of the *acquis* without an implementable timetable. Furthermore, gradual adoption of the *acquis* should be undertaken in conjunction with the relevant administrative and institutional capacity.

Finally, due to the evolving nature of immigration legislation in Albania, but also due to the evolving nature of the EU *acquis*, the current analysis in the sphere of immigration law should not be considered as final or complete, but as a continuous process, which needs to be developed and amended. In consideration of such changes, further analysis, in particular in those spheres outlined within the context of this report, are necessary. Further analysis will continue beyond the publishing of this report in consideration of current developments in Albanian immigration legislation. Analysis into the other major international migration law instruments, including the Convention Concerning Migration for Employment (Revised 1949) C 97, the Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (1975) (No. 143) and the European Convention on the Legal Status of Migrant Workers (1977) is required and is currently being undertaken in order to give a complete overview to allow for the necessary reforms to take place as envisioned in the National Strategy on Migration. This analysis will continue to take place within the framework of the development of the National Strategy on Migration.

# Annex I

## List of International Legal Acts

### A. EU ACQUIS

#### 1. Entry

- Council Directive 64/221/EEC of 25 February 1964 on the co-ordination of special measures concerning the movement and residence of foreign nationals which are justified on the grounds of public policy, public security or public health.
- Text adopted by Ministers on 11.06.1992 on acceptable/unacceptable travel documents.
- Council Regulation No. 1683/1995 of 29 May 1995 laying down a uniform format for visas as amended by Regulation No. 334/2002 of 18 February 2002.
- Joint Action of 3 December 1998 adopted by the Council on the basis of Article K.3 of the Treaty on the European Union concerning the setting up of a European Image Archiving System (FADO).
- Council Recommendation of 29 April 1999 on the provisions for the detection of falsified documents in the visa departments of representations abroad and in the offices of domestic authorities dealing with the issue or extension of visas.
- Resolution of the representatives of the governments of the Member States, meeting within the Council of 17 October 2000 supplementing the resolutions of 23 June 1981, 30 June 1982, 14 July 1986, and 10 July 1995 as regards the security characteristics of passports and other travel documents.
- Council Regulation No. 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement as amended by Council Regulation No. 2414/2001 of 7 December 2001 and Council Regulation No. 453/2003 of 6 March 2003.
- Council Regulation No. 1091/2001 of 28 May 2001 on freedom of movement with a long-stay visa.
- Council Regulation No. 333/2002 of 18 February 2002 on a uniform format for forms for affixing the visa issued by Member States to persons holding travel documents not recognised by the Member States.
- Council Regulation No. 415/2003 of 27 February 2003 on the issue of visas at the border, including the issue of such visas to seamen in transit.

#### 2. Admission

- Council Resolution of 20 June 1994 on the limitation of admission of third-country nationals to the territory of the Member States for employment.
- Council Resolution of 30 November 1994 relating to the limitations on the admission of third-country nationals to the territory of the Member States for the purpose of pursuing activities as self-employed persons.
- Council Resolution of 30 November 1994 on the admission of third-country nationals to the territory of the Member States for study purposes.
- Proposal for a Council Directive on the conditions of entry and residence of third country nationals for the purpose of paid employment and self-employed activities (COM/2001/386 final – CNS 2001/0154).
- Proposal for a Council Directive on the conditions of entry and residence of third country nationals for the purposes of studies, vocational training or voluntary service (COM 2002/0548 final – CNS 2002/0242).

#### 3. Sojourn

- Council Resolution of 4 March 1996 on the status of third-country nationals residing on a long-term basis in the territory of the Member States.
- Council Decision 701 of 3 December 1998 on common standards relating to filling in the uniform format for residence permits.
- Council Regulation No. 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals.
- Proposal for a Council Directive concerning the status of third-country nationals who are long-term residents (COM/2001/127 final).

#### **4. Family Reunification**

- Council Directive No. 86 of 22 September 2003 on the right to family reunification.

#### **5. Unaccompanied Minors**

- Council Resolution of 26 June 1997 on unaccompanied minors who are nationals of third countries.

#### **6. Combating Illegal Migration**

- Recommendation of 1 June 1993 concerning checks on and expulsion of third-country nationals residing or working without authorization.
- Recommendation of 22 December 1995 on harmonizing means of combating illegal immigration and illegal employment and improving the relevant means of control.
- Recommendation of 27 September 1996 on combating the illegal employment of third-country nationals.
- Council Resolution of 4 December 1997 on marriages of convenience.
- Council Directive No. 51 of 28 June 2001 supplementing the provisions of Article 26 of the Schengen Convention.
- Council Directive No. 90 of 28 November 2002 defining the facilitation of the unauthorised entry, transit, and residence.
- Council Framework Decision of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of the unauthorised entry, transit and residence.

#### **7. Equal Treatment/Non-Discrimination**

- Joint Action 443 of 15 July 1996 adopted by the Council on the basis of Article K.3 of the Treaty on the European Union concerning action to combat racism and xenophobia.;
- Council Directive No. 43 of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.;
- Council Directive No. 78 of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

#### **8. Return and Removal**

- Recommendation of 30 November 1992 regarding practices followed by Member States on expulsion.
- Recommendation of 30 November 1992 concerning transit for the purpose of expulsion.
- Recommendation of 1 June 1993 concerning checks on and expulsion of third-country nationals residing or working without authorization.
- Recommendation of 30 November 1994 concerning the adoption of a standard travel document for the removal/expulsion of third-country nationals.
- Recommendation of 22 December 1995 on concerted action and cooperation in carrying out expulsion measures.
- Decision of 16 December 1996 on monitoring the implementation of instruments adopted by the Council concerning illegal immigration, readmission, the unlawful employment of third country nationals and cooperation in the implementation of expulsion orders.
- Council Directive 40 of 28 May 2001 on the mutual recognition of decisions on the expulsion of third-country nationals.

#### **9. Readmission**

- Decision of 16 December 1996 on monitoring the implementation of instruments adopted by the Council concerning illegal immigration, readmission, the unlawful employment of third country nationals and cooperation in the implementation of expulsion orders.
- Recommendation of 30 November 1994 concerning a specimen bilateral readmission agreement between a Member State of the European Union and a third country.
- Recommendation of 24 July 1995 on the principles for the drafting of protocols on the implementation of readmission agreements.
- Decision of 16 December 1996 on monitoring the implementation of instruments adopted by the Council concerning illegal immigration, readmission, the unlawful employment of third country nationals and cooperation in the implementation of expulsion orders.
- Council Decision of 2 December 1999 on the inclusion of model readmission clauses in community

agreements and in agreements between the EC, its Member States and third countries.

- Decision of the Executive Committee of 15 December 1997 on the guiding principles for means of proof and indicative evidence within the framework of readmission agreements between the Schengen States.
- Council Decision of 2 December 1999 on the inclusion of model readmission clauses in community agreements and in agreements between the EC, its Member States and third countries.

## **10. Migration Data**

- Council Conclusions of 30 November 1994 on the organisation and development of the Centre for Information, Discussion and Exchange on the Crossing of Frontiers and Immigration (CIREFI).
- Directive No. 46 of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.
- Joint Action of 3 December 1998 adopted by the Council on the basis of Article K.3 of the Treaty on European Union concerning the setting up of a European Image Archiving System (FADO).

## **11. Communications**

- Communication from the Commission to the Council and the European Parliament on a Community Immigration Policy (COM (2000)757 final).
- Communication from the Commission to the Council and the European Parliament on an open method of coordination for the community immigration policy (COM (2001)387 final).
- Communication from the Commission to the Council and the European Parliament on a common policy on illegal immigration (COM (2001)672 final).
- Communication from the Commission to the Council and the European Parliament on a Community return policy on illegal residents (COM (2002)564 final).
- Communication from the Commission to the Council and the European Parliament on integrating migration issues in the European Union's relations with third countries (COM (2002)703 final).
- Communication from the Commission to the Council and the European Parliament to present an Action Plan for the collection and analysis of Community Statistics in the field of migration (COM (2003)79 final).

## **12. Horizontal**

- Treaty on European Union.
- Treaty establishing the European Community.
- EU Charter of Fundamental Rights.
- Convention implementing the Schengen Agreement of 14 June 1985.
- Protocol integrating the Schengen *acquis* into the framework of the EU annexed to the Treaty on European Union and to the Treaty establishing the European Community (Schengen Protocol).
- Council Decision 435 of 20 May 1999 concerning the definition of the Schengen *acquis* for the purpose of determining, in conformity with the relevant provisions of the Treaty establishing the European Community and the Treaty on European Union, the legal basis for each of the provisions or decisions which constitute the *acquis*.
- Common Manual on External Borders (2002/C 313/02).
- Common Consular Instructions on visas for the diplomatic missions and consular posts (2002/C 313/01).

## **B. ACTS OF THE COUNCIL OF EUROPE**

- Convention for the Protection of Human Rights and Fundamental Freedoms
- Protocol No 4 of 1963 to the Convention for the Protection of Human Rights and Fundamental Freedoms.
- Protocol No 12 of 2000 to the Convention for the Protection of Human Rights and Fundamental Freedoms..
- Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data of 28.01.1981.
- European Convention on the Legal Status of Migrant Workers (1977).

## **C. ACTS OF THE UNITED NATIONS**

- Universal Declaration of Human Rights (1948).7
- International Covenant on Economic, Social and Cultural Rights (1966).
- International Covenant on Civil and Political Rights (1966).



- International Convention on the Elimination of All Forms of Racial Discrimination (1965).
- Convention on the Elimination of All Forms of Discrimination against Women (1979).
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984).
- Convention on the Rights of the Child (1989).
- Convention against the Transnational Organised Crime (2000).
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime (2000).
- Protocol against the Smuggling of Migrants by Land, Sea, and Air, supplementing the Convention against the Transnational Organised Crime (2000).
- Convention on the Reduction of Statelessness (1961).
- Convention relating to the Status of Stateless Persons (1954).
- Convention on the Protection of the Rights of All Migrant Workers and Their Families (1990).

#### **D. ACTS OF THE INTERNATIONAL LABOUR ORGANISATION**

- Convention Concerning Migration for Employment (Revised 1949) C 97.
- Migrant Workers Convention (1975) C 143.
- Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (1975) (No. 143).
- Convention No. 108 concerning Seafarers' National Identity Documents of 1958, revised with Convention No. 185 of 2003.

## Annex II

### List of the Albanian Legislation

Constitution of Albania date 21 October 1998 (CoA).

#### Laws

- Law on Foreigners No. 8492 date 7.05.1999 (LoF).
- Law on Asylum No. 8432/1998 (Law on Asylum).
- Law on Integration and Family Reunification of persons granted asylum in Albania No. 9098/2003 (Law No. 9098/2003).
- Law on the Guard and Protection of the State Border of RoA No. 8772/2001 (Law No. 8772/2001).
- Law on the Albanian Coastal Guard No. 8875/2002.
- Law on Albanian Citizenship No. 8389/1998 as amended by Law No. 8442/1999 (Law No. 8389/1998).
- Law on Providing Passports for Travelling Abroad to Albanian Citizens No. 8668/2000 (Law No. 8668/2000).
- Law on Civil Status No. 8950/2002 (Law No. 8950/2002).
- Law on Identity Number No. 8951/2002 (Law No. 8951/2002).
- Law on the Identification of the Citizens No. 8952/2002 (Law No. 8952/2002).
- Labour Code No. 7961/1995 as amended by Law Nos. 8085/1996 and 9125/2003 (Labour Code).
- Law on the Encouragement of Employment No. 7995/1995 (Law No. 7995/1995).
- Law on the Emigration of Albanian Citizens for Employment Purposes No. 9034/2003.
- Law on Social Insurance No. 7703/1993 as amended by Law Nos. 7932/1995; 8368/1998; 8852/2001; 8889/2002 (Law No. 7703/1993).
- Law on Health Insurance No. 7870/1994 (Law No. 7870/1994).
- Law on Social Assistance and Social Care No. 7710/1993 as amended by Law No. 7710/1994 (Law No. 7710/1993).
- Law on the State Labour Inspectorate No. 7986/1995 (Law No. 8986/1995).
- Law on Pre University Education No. 7952/1995 (Law No. 7952/1995).
- Law on Higher Education No. 8461/1999 (Law No. 8461/1999).
- Family Code No. 6599/1982 (no longer in force since by January 1 2004).
- Law on Family Code No. 9062/8.05.2003 (in force since by January 2004).
- Law on the Status of the Orphan No. 8153/1996.
- Law on the Adoption of Minors from Foreigners No. 7650/1992 (Law No. 7650/1992).
- Law on the Civil Code No. 7850/1994 as amended by Law No. 8781/2001 (Civil Code).
- Law on the Civil Procedural Code No. 8116/1999 (Civil Procedural Code).
- Law on Copyright No. 7564/1992 as amended by Law Nos. 7293/1996; 8594/2000; 8630/2000 (Law on Copyright).
- Law on Industrial Property No. 7819/1994 as amended by Law No. 8477/1999 (Law No. 8719/1994).
- Law on the Privatization of Agricultural Land and Forests No. 8337/1998 (Law No. 8337/1998).
- Law on the Protection of Private Property, Free Enterprise, Independent Activities, and Privatization” No. 7512/1991 as amended by Law No. 8159/1996 (Law No. 7512/1991).
- Law on the Criminal Code No. 7895/1995 as amended by Law Nos. 8204/1997; 8279/1998; 8733/2001 (Criminal Code).
- Law on the Criminal Procedural Code No. 7905/1995 (Criminal Procedural Code).
- Law on the Administrative Contravention No. 7697/1993 as amended by Law Nos. 7813/1994; 7927/1995; 8277/1998; 8343/1998.
- Law on Administrative Procedures No. 8485/1999 (Law No. 8485/1999).
- Law on the Protection of Personal Data No. 8517/1999 (Law No. 8517/1999).
- Law on Advocacy No. 7827/1994 (Law on Advocacy).
- Law on the People’s Advocate No. 8454/1999 as amended by Law No. 8600/2000 (Law on the People’s Advocate).
- Law on the Organization and Functioning of the Council of Ministers No. 9000/2003.
- Law on the Exercise of Consular Functions from the Diplomatic and Consular Representatives No. 8372/1998 (Law No. 8372/1998).
- Law on the State Police No. 8553/1999.
- Law on the Organization and Functioning of the Ministry of Justice No. 8678/2000.
- Law on Non- Profit Organizations No. 8788/2001.

- Law on the Registration of Non-Profit Organizations No. 8789/2001.
- Law on Taxation Procedures in Albania No. 8560/1999 (Law No. 8560/1999).
- Law on the Prevention of Money Laundering No.8610/2000 as amended by Law 9084/2003 (Law No. 8610/2000).
- Law on Road Transport No. 8308/1998 as amended by Law No. 9096/2003 (Law No. 8308/1998).
- Law on the Ratification of the Agreement with Greece for the Greek Loan on Housing Program No. 8448/1998 (Law No. 8448/1998).
- Law on the Ratification of the Convention Relating to the Status of Stateless Persons No. 9057 date 24.04.2003.
- Law on the Ratification of the Convention on the Reduction of Statelessness No. 9059 date 08.05.2003.

### **Decisions of Council of Ministers**

- DCM "On entrance, stay and treatment in the republic of Albania" No.439/2000 *as amended by* DCM Nos. 532/2001; 669/2001; 253/2002; 220/2003; 330/2003 (DCM No. 439/2000).
- DCM "For the Approval of the Regulation 'On the Reception Centres and Temporary Treatment of the Foreigners Who are not Asylum Seekers'", No. 46/2002 (No. 46/2003).
- DCM "On Issuing of Work Permit to Foreigners", No. 262/2000 (DCM No. 262/2000).
- DCM "On the way of licensing and functioning of the private agencies of employment", No. 708/2003.
- DCM "On the Criteria and Procedures for the Licensing and Functioning of the Educational Private Institutions and Private Secondary Institutions that Teach Religious Subjects in a Foreign Language", No. 248/1999 (DCM No. 248/1999).
- DCM "On Private Higher Institutions", No. 156/2001 (DCM No. 156/2001).
- DCM "On Establishing the Albanian Language Course for the Foreign Students", No.162/1995 (DCM No. 162/1995).
- DCM "On the Approval of Action Plan for the National Strategy of Housing", No. 21/2001.
- DCM "On the Definition of Criteria for Homeless Families", No. 49/1993.
- DCM "On the reward of the budgetary employees which are employed in other secondary activities", No. 720/1995.

### **Instruction of Ministers/Regulations**

- Joint Instruction of the Minister of Foreign Affairs and the Minister of Public Order "On the Procedures for Entry, Stay and Treatment of the Foreigners in Albania", respectively 2430/14.05.2001 and 1460/21.05.2001, as amended by 2003 Joint Instruction (Instruction No. 1460/2001).
- Instruction "On the Procedures to be Followed by State Police to Facilitate the pre-screening of Detained Foreigners" No. 1382/2001 (1382/2001).
- Instruction of the Minister of Labour and Social Affairs "On Issuing of Work Permits to Foreigners", No. 786/2001 (786/2001).

### **Others**

- The Rules of the Assembly of RoA-1999.
- Prime-Minister Order on the Constitution of the Task Force for Studying and Improving the Asylum System in RoA No. 134/2001.
- MoPO Draft Law on the Amendment on the Law on Foreigners – the October 2003 Version.
- MoLSA draft Law on the Amendments of the LoF, July 2003 Version.
- Normative Dispositions on Pre University Public Schools of September 2003.
- Regulation of Social Insurance Institute No. 36/ 2002 (SIII Regulation 36/2002).
- Regulation on the Functioning of Reception Centers and Temporary Treatment of the Foreigners who are not Asylum Seekers.
- Border Agreement between Albania and FYROM- "On regulation of the small inter border traffic for the people living in the border zones" of 04.12.1997.
- Draft Action Plan on the Free Movement of People of 08/07/2003.
- Stabilization and Association Report 2003 for Albania (CoM (2003)139 final).
- MARRI Program of Action, Final August 2003. Stability Pact for Southeast Europe.
- IOM Paper- "Shaping up IOM's Strategy Agenda within Albanian's Migration Management Priorities"- February 2003.
- National Strategy on Border Management approved by DCM No. 118, date 27.02.2003.
- National Strategy on Counter Trafficking adopted in December 2001.