

Migrants Who Enter/Stay Irregularly in Albania

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Abstract

Immigration is quite a sensitive topic for the world nowadays and for Albania in particular its management is a challenge closely related to its efforts towards full integration in the EU. In 2016 Albania must meet clear legal and institutional standards as described in many EU founding treaties, directives and regulations, in the face of migratory flows from Greece and Macedonia, which created many difficulties related to the accommodation and selection/registration procedures. This paper will provide an analysis of the country's capacities in handling the phenomenon and the key challenges it needs to address and manage. Primary data were collected from the following activities: meeting with immigration officials at various levels, brainstorming sessions focusing on the key legal and institutional issues; field assessment of procedure applications and periodical monitoring. Many immigrants come from EU borders (Greece) and non-EU borders (Macedonia), to use Albania as transit towards other EU countries such as Germany. This is valid for both asylum seeker fleeing wars and economic immigrants. There are also cases of human trafficking of people against their will and unaccompanied minors. Albanian institutions have been capable to provide adequate treatment of immigrants with the assistance of UN bodies and funds from the EU, in terms of screening and identification, as well as offering temporary humanitarian support (food, shelter and medical assistance). The role of State Police is crucial, in its collaboration with Frontex in complying with EU border and immigration rules. Albanian institutions have improved significantly in their handling of migratory flows, however, their capacity building needs support in key areas such as identification of types of immigrants (interpreters, motives, legal status) and their accommodation in adequate structures to prevent these flows continuing and not serve as a transit route.

1. Introduction

1.1 Treatment of migrants, who enter/stay irregularly in Albania

The Albania integrity road to European Union - a common goal of the Albanians- is complex and with many challenges. In order to make this road and these challenges real (which makes our wish, part of self integration), there serve those legal, practical and institutional parts, which are named "*Acquis Communautaire*" in the terminology of EU. This includes the appointed standards from Founding Treaties of EU to Directives, Regulations and other acts, which compose a live organism as well as stable, unified and diverse. Albania has made many steps to achieve these standards. There is a list of actions and acts to be taken. It is initiated with the Association and Stabilization Agreement with EU of 2013. In this agreement there are foreseen 8 priorities (priority areas) and one of these are asylum and migration. Fulfilling properly the priorities will provide the transition from EU candidate country phase to member country one. Albania, a country and a society historically generous, has offered its help for the persons in need in their countries. After signing the Refugees Convention, Albania conducted a legal framework and asylum system for this reason. Since 1992, Albanian Asylum system has initiated through signing and ratification the convention of 1952. Some preliminary provisions in the Law of Migration (1995), opened the road for further development. Further development in Balkan, especially the war in Former Yugoslavia, geographical position of Albania as a focal point for transit cross of foreigners towards EU countries. On 14 December 1998, Albania in cooperation with UNCHR adopted an asylum law because of the necessity of expanding the Albanian legislation in the required level by EU¹. The aim of this law is to identify and to set the duties as in the Convention (1951) and recognize certain rights for the refugees, asylum seekers and persons under additional custody (as are named in the law the persons under temporarily custody on humanitarian bases). Albania has made huge steps in

¹See Council Directive 2001/55/EC of July 20th 2001 for the standards, giving temporarily custody in case of massive flux of displaced people and the measures for having a balance in the attempts among Member States in the admission of these persons and the confronting the consequences of this action.

the asylum and migration field. Being a country in developing process and having not awareness for increase the Albania role -as a country that send and (targeted by migrants) receive migrants from all over the world, including refugees- has made this field to not have the accurate attention and importance by the state authorities, society, media etc. Rules application, regarding the refugees and asylum seekers, is not in the required levels pursuant to international standards (especially the EU ones).

In the asylum migration system, the selection is a procedure aiming to offer humanitarian solution for the irregular foreigners, selected by State Police. Selection system is a connecting link that provide obligation respect by Convention (1951), Protocol (1967), Albanian legislation implementation, especially the Asylum Law and Selection Guideline. In the project framework of cooperation with UNHCR and Albanian Government financed by EU, until 20006, the selection was done by common interviewing groups, teams with representatives from state specialized bodies and different international agencies that have the liability for accomplishing correctly/pragmatically obligations that derive from legislation implementation and normative acts for this system, composed as below:

- State Police- referring and treating the cases at the beginning phase;
- DPSHR–DPSHR – treating the asylum seekers;
- UNHCR –UNHCR- assisting DPSHR with the treatment of asylum seekers/ directing the process;
- IOM –IOM- repatriation of the persons that want to return;
- OSBE – assisting in field and suggesting preliminary measures

Since October 2006, selection process has been in the State Police liability, currently implemented thoroughly by Police of Border and Migration Selection procedures include the treatment of three categories:

1. Persons who leave their origin country because of fear and persecution and cannot return (asylum seekers);
2. Persons who leave their origin country because of their economic reasons (economic emigrant);
3. Persons who live their origin country involuntarily, for trafficking reasons and forced labor (human trafficking).

2. Literature Review

2.1 Unaccompanied minors

One of the big challenges that Albanian State is facing in the application accurately the selection procedure, is the fact that this procedure is conceived as a continual process that have to be kept always in high levels of implementing the international standards. Practically, the selection procedure requires that Police of Border and Migration identify in the administrative areas it covers, skillful translator for the most likely languages of countries of irregular immigrants. This identification shall be accompanied with a continual updating, since the interviewing of individuals caught in border or within the territory effects directly to their accurate treatment. Also, the category identification helps too, as well as respecting the procedural deadlines, whix are part of the work and the internal organization of the police procedures. From the part of Police of Border and Migration in cooperation with Directorate of Asylum are made attempts to identify translators of some languages and especially of the rare ones, in order to have them present during the selection procedures and to apply the international standards as well as for informing the immigrants regarding their rights. Also, the translators make clear the process. Therefore, this procedure requires that Police of Border shall be always updated with the latest news on events that can effects the increasing of migration flows to the RoA. In the article 33, first section of Convention "On Refugee Status" it is cited "No Contracting State shall expel or return ("refouler ") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion". It is obvious that Convention affirms the important principle of the *Non-Refoulement*, making it the center of the obligations of Contracting States, guaranteeing and protecting the rights of the refugees and the asylum seekers. Since 1992, Republic of Albania has ratified the Convention "On the Status of Refugee". Therefore, in accordance with the Article 122 of our Constitution, it is considered that this international agreement consists of a part of the legal internal system of Republic of Albania. Therefore, it is the obligation of each State body to respect rigorously the request derived from Convention "On the Status of Refugee", including here the important principle "Non-Refoulement", affirmed in the Article 33/1 in this Convention. Furthermore, considering that the principle of "Non-Refoulement" is understood or recognized indirectly even in the other citations of our Convention, where it can be distinguished among the others the articles as below:

1. Article 39/3, where is mentioned that "It is prohibited the collective expulsion of foreigners. The expulsion of foreign individuals is permitted as foreseen by law";
2. Article 40, where is mentioned that "Foreigners have the right of shelter in the Republic of Albania according to

law", as well as:

3. Article 25, where is mentioned that "No one can be subject of torture, expulsion or cruel treatment, inhuman or humiliating".

This relates not only to the internal situation in neighbouring countries, but also the self knowledge of the asylum system and the treatment of foreigners in countries affected by wars or conflicts, external and internal, such as Iraq, Libya, Egypt, Afghanistan, Congo and Syria with over 2 million refugees fled the country, speak a lot about migratory flows towards more peaceful areas of the world, where the European Union stands. But not only that, the difficult economic situation and above all any standard treatment of irregular foreigners caught or found on Greek territory, is the primary reason for multiple flows of foreigners who can come to Albania. The events of 2016, the arrival of migratory flows near the Albanian border Greece, Italy, Macedonia has shown that even for the EU member states is a difficult managing massive flow as great as in reception, conducting the selection procedure, accommodation and implementation of standards previously adopted by member countries. Acceptance of German nationals who come from countries at war did have a large increase in the flow at the external border of the EU and difficulty in movement of these citizens in the countries of destination, or in the distribution of quotas adopted previously by member countries. Hungary for example, which does not allow passage of nationals of third countries outside the quota set (by placing military forces and set up metal fences to prevent the uncontrolled movement or decision of Austria for closing the border for several days and accepting only the citizens who struggle in countries like Syria, Iraq made that have an impact on all countries involved in this route, especially in Serbia and Macedonia. Facing the difficulty to identify the nationals of third countries and some of them by not seeking international protection in the first country of EU (in contradiction with the Convention in Dublin) but wanting to go to the countries of destination as e .x. Germany some of them try to go to EU countries, but another part is ready to use transit through Albania using other routes versus unacceptable possibility of returning to their country or in Greece.

3. Methods

Primary data were collected from the following activities: meeting with immigration officials at various levels, brainstorming sessions focusing on the key legal and institutional issues; field assessment of procedure applications and periodical monitoring.

4. Results and Discussion

Many immigrants come from EU borders (Greece) and non-EU borders (Macedonia), to use Albania as transit towards other EU countries such as Germany. This is valid for both asylum seeker fleeing wars and economic immigrants. There are also cases of human trafficking of people against their will and unaccompanied minors. Albanian institutions have been capable to provide adequate treatment of immigrants with the assistance of UN bodies and funds from the EU, in terms of screening and identification, as well as offering temporary humanitarian support (food, shelter and medical assistance). The role of State Police is crucial, in its collaboration with Frontex in complying with EU border and immigration rules.

Related to the irregular foreign citizens treated to the Closed Centre of Kareç:

Year	Total	Males	Females
2013	331	294	37
2014	472	412	60
2015	299	278	21
2016	96	66	30

Foreign citizens selected as asylum seekers by Border and Migration Police and sent to the National Asylum Seekers Centre in Tirana.

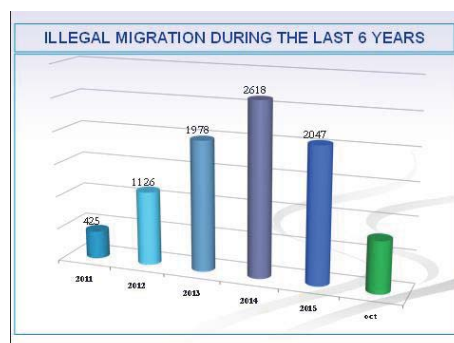
Year	Total
2013	158
2014	298
2015	135
2016	172

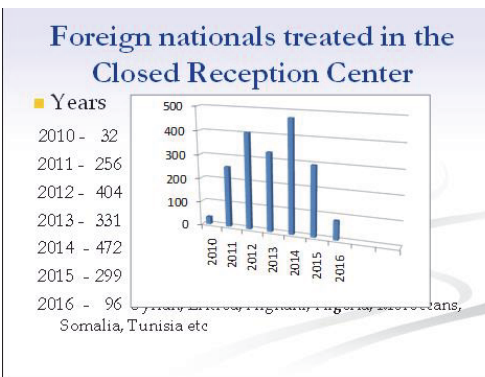
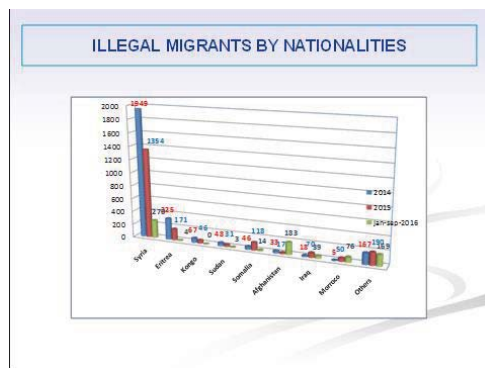
These are citizens who have not requested international protection and in the Republic of Albania are at the irregular category. At this context, it is very important the training with knowledge of concepts such as third safe country and the changes that can be done, depending on the circumstances and developments, it is a very important advantage

for achieving Albania goals on its way to integration. For a better identification with the support of ICITAP, an American project for assisting the State Police is designed FER (Foreign Electronic Registry) which serves to identify and record entry and exit of foreign nationals caught illegally. This registry dramatically improves the work of border police and migration as well as a recording of people who are caught crossing the border illegally, or those seeking international protection (identification made by declarations freely, picture, fingerprint). This system is installed at all border crossing points, the Regional Border and Migration Directorate and General Directorate of Border and Migration. The main international sources for the implementation of the rights of migrants entering the country illegally are the reports of the Special Reporter of the UN and the UNHCR. In 2013, the Special Reporter on migrants, in addition to respecting the rights of migrants, stressed the need for adequate information and documenting the best cases of persons seeking protection in Albania. Special Reporter on migrants in Albania recommended that migrant children should not be subject to detention, or it can occur only in very exceptional cases, as a last resort and for a very short period of time. The Office of the UN High Commissioner for Refugees (UNHCR) has urged Albania to provide interpreters for people seeking protection in the country. The report by the High Commissioner UN Office on Human Rights, under paragraph 15 (b) of the annex to Council resolution on human rights 5/1 and paragraph 5 of the annex to Council resolution 16/21, Albania 13 February 2014. The main domestic source of statistics on foreign nationals trying to enter Albania improperly is the General Directorate of Border and Migration, Asylum Directorate of the Ministry of Internal Affairs. According to this source, about 18 percent of them, 471 of 2,618 were refused to enter in Albania for several reasons, such as lack of documents to prove identity, previous violation of residence rules in Albania, lack of financial support, not justifying the reason of entering the country, etc. Another national source of information for the treatment of migrants entering the country illegally is the Albanian Helsinki Committee. During the last years the Albanian Helsinki Committee conducted three investigative missions in Albania-Greece border checkpoints to monitor the treatment of foreigners entering the country illegally.

Monitoring reports through years are as follows:

- Usually irregular migrant women are treated by women police officers, which make about 50 percent of the police staff in Tirana International Airport and 25 percent of police officers in the port of Durres;
- Professional capacities of police officers which serve to irregular migrants have not increased;
- Police needs more specific training on the legislation on human rights and for protection procedures of irregular foreign migrants from maltreatment;
- There exists a good cooperation between Albanian and Greek police for the treatment of irregular migrants who cross the Albanian- Greek border.
- To be improved the manner and security elements regarding the permit of stay of foreign citizens in Albania.
- Albania should adopt a Strategy and an Action Plan on Migration, taking into consideration the implementation of the previous Strategy. It should be monitored closely the implementation process of the Strategy and of the Action Plan for the reintegration of the returnees;
- Strengthening of capacities for the management of migration;
- Improvement of reception premises such as in BCP as well as within the territory.





5. Conclusion and Recommendations

Albanian institutions have improved significantly in their handling of migratory flows, however, their capacity building needs support in key areas such as identification of types of immigrants (interpreters, motives, legal status) and their accommodation in adequate structures to prevent these flows continuing and not serve as a transit route.

- Data on foreigners in Albania put more emphasis on asylum-seekers, refugees and persons who enter the country irregularly and less so on migrant workers and their social, economic, political and cultural rights.
- The power of the Ministry of Social Welfare and Youth and its agencies in shaping migration policies and addressing migrant workers women rights in Albania has been reduced and the power of the Ministry of Internal Affairs and its institutions and agencies has been increased during the last years. The treatments of

migrants and foreigners in Albania risk taking on the connotation of a public safety, public order and security issue, rather than of a social economic, cultural and worker mobility issue.

- The legislation also requires certain financial and economic guarantees so that foreigners residing, working, studying or conducting other economic, social, humanitarian, religious, cultural or other legal activities in the country do not burden the welfare system.
- Albania has ratified and is successfully implementing the majority of international conventions on migrants workers. Although it is typical migrant-sending country, Albanian has almost complete legal framework on migrant workers.
- There are no legal provisions that directly address the migrants gender perspective and gender equality.
- The communication of Border and Migration police with foreigners entering the country irregularly needs to be improved through recruitment of personnel that speak foreign languages, offering courses for this purpose, or by hiring part-time persons who speak these languages, because provision of information in the native or in a language a migrant understands is an important human rights for foreigners entering Albania irregularly.
- The psychosocial service personnel across the country need additional specific training to be able to better address challenges of foreigners and migrant workers, particularly those deprived of their liberty.
- Medical doctors, nurses and hospital and healthcare personnel need additional specific training to be able to improve services of foreigners and migrant workers in the country by better understanding their respective health risks and health social determinants as well as the culture's impact on health and illnesses.
- The Ombudsman should make direct reference to the protection of the rights of migrants in Albania, in addition to property, housing, consumer or environment rights, and their rights to address and require assistance and support from the institution.
- The Albanian Helsinki Committee should make direct reference to the protection of the rights of migrants in Albania, in addition to the rights of natives and Albanian emigrants in receiving countries, and their rights to address and require assistance and support from this institution.

References

- Law No. 108/2013 "On foreigners" is fully approximated with the Regulation (EC) no. 810/2009 of the European Parliament and of the Council of 13 June 2009 "Establishing a Community Code on Visas (Visa Code)" CELEX no.32009R0810, *Official Gazette of the European Union, Series L Nr. 243, dated, 15.9.2009, pages 1–58.*
- Assessment on the protection of the Rights of Migrant Workers in Albania. (Prepared for the International Organization for Migration IOM June 2016.
- Extended migration profile for Albania 3013
- Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ L 105, 13.4.2006, pg. 1) Celex-No. 3 2006 R 0562
- The Charter of Fundamental Rights of the European Union 2000.
- EU Directive for Racial Equality 2000/43 / EC..
- Global approach to migration and mobility 2005.
- Blue Card Directive 2009.
- Employer Sanctions Directive for 2009.
- Directive to permit unified, 2011. Seasonal workers directive 2014.
- Directive on intra-corporate transfer of skilled workers from non-EU countries, 2014.
- European Agenda for Migration 2015.
- Regulation (EC) No 296/2008 of the European Parliament and of the Council of 11 March 2008 (OJ L 97, 9.4.2008, pg. 60; CELEX Nr. 32008R0296)
- Regulation (EC) No 81/2009 of the European Parliament and of the Council of 14 January 2009 (OJ L 35, 4.2.2009, pg. 56; CELEX Nr. 32009R0081)
- Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 (OJ L 243, 15.9.2009, pg. 1; CELEX Nr. 32009R0810)
- Regulation (EC) No 265/2010 of the European Parliament and of the Council of 25 March 2010 (OJ L 85, 31.3.2010, pg. 1; CELEX Nr. 32010R0265)