

## The Adaptation of the Albanian Legislation on Entry and Residence of Foreign Citizens within the Integration Process

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### Abstract

In March 2013, Albania adopted a new law on foreigners which repealed the law of 2008. The aim of the new law is to guarantee the treatment of foreigners entering or seeking to enter, stay or work in the territory of Albania according to the criteria and norms of the European Union. The law in question brings innovation about travel documents when for the first time is recognized the group passport, a standard set by the European Union legislation. Also for the first time it establishes a residence permit for voluntary workers and researchers. Regarding the residence permits, there is a change to their labeling and in accordance with the EU legislation it is provided the "blue card" residence permit, which is issued to highly qualified workers. The new law also harmonizes the criteria for entry and stay in the territory of Albania with those of the Schengen Code. In this paper will be analyzed the European Union legislation on entry and residence of third-country nationals, which will be followed by the analyses of the provisions of the Albanian law of 2013 that discipline the entry and stay of foreigners in the territory of Albania, in order to identify the level of harmonization of it with the European Union legislation.

**Keywords:** Schengen Border Code, third-country nationals, immigration, Albania legislation.

### 1. EU Legislation on the Entry and Movement of Third-Country Citizens

With the entry into force of the Treaty of Amsterdam on 1 May 1999 the measures regarding immigration, in entry, residence and return of third-country nationals were included in Title IV called "visa, asylum, immigration and policies regarding the free movement of people" by entering the community competences. The Treaty of Amsterdam will communitarise even *acquis* Schengen, which turns in this way as part of Community law.

The Articles 62 and 63 of the Treaty of Amsterdam provided Community competence to adopt acts regarding to visa policy, border crossing, the entry, residence and procedures to be followed by Member States to issue long-term visas and residence permits, including residence permits for family reunification. It will be exactly the Article 62 that will serve as a legal basis for Regulation 562/2006 which has created a community code relating to crossing borders ending the existing fragmented framework in this discipline. The Article 63 has served as a legal basis for the adoption of all acts regarding the entry, residence, movement and repatriation (item 3 b) of third-country nationals, and more specifically to: Regulation (EC) no. 1030/2002 which was later modified by Regulation (EC) no. 380/2008 regarding the establishment of a uniform system on the issuance of residence permits for third-country nationals. This article has served as the legal basis even for acts regarding the entry and residence for certain categories third-country nationals as: Directive no. 2003/86 on the right to family reunification, Directive no. 2003/109 in relation to long-term residents and Directives no. 2004/114 and 2005/71 regarding the conditions of admission of third-country nationals who enter the territory of the Community for study, practice or research.

Regulation 562/2006<sup>1</sup> which establishes a Community code relating to the regime of border crossing by persons, known as "Schengen Border Code" has somehow simplified the existing framework of secondary norms about crossing borders, which resulted quite fragmented. Before the adoption of the Regulation, the entry into Community territory was disciplined by several norms of the Convention of application of the Schengen Agreement, by several decisions of the

<sup>1</sup> 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) in Official Journal of the European Union L 105/1 date 13.04.2006.

Executive Committee set out in Decision 1999/435 / EC<sup>2</sup> of the Council and the regulations adopted by the Council concerning visas.

Regulation 562/2006 has repealed the provisions of the Convention concerning the conditions for short term entry (Articles 2 to 8) and some decisions of the Council (inter alia Regulations 790/2001 and 2133 / 2004) and of the Executive Committee<sup>3</sup>, while have remained in force the norms of Convention of implementing the Schengen Agreement concerning visas and some Council Regulation adopted to implement the provisions of Article 62.2, letter b) even these regarding visas discipline.

European discipline on third-country nationals does not create a homogeneous legal status on immigrant. This discipline created by a derived effective body does not disciplines the immigrant in general creating a unitary legal status, but creates differentiated regimes for certain categories of immigrants. Besides the primary rates, there is also a set of derived norms on privileged categories of nationals of third countries. It is noted that besides the norms that discipline the legal immigrant resident, who can be called common discipline regime, there are recognized even these special or privileged regimes: the family norms, the norms on foreigners provided by the association agreements with third countries, norms on long-term resident immigrants and recently the norms on immigrants which are highly skilled workers. Another category of norms create a special status for asylum seekers and foreigners seeking asylum or temporary protection. This separation is reflected in recent Albanian legislation on immigration, which is harmonized with the EU.

## 2. The Entries for Short- Term Residence in the Discipline of the EU

Regulation 562/2006 provides the lack of controls for every person that crosses internal borders and determines the manner, conditions and controls which are levied when crossing the external borders of the European Union territory. The regulation in question was applicable to all persons who cross internal or external borders of a Member State without prejudice to the rights of the persons enjoying from the right to freedom of movement and the rights of refugees and those seeking international protection (Article 3).

As a "person enjoying of Community law on free circulation" regulation identifies:

- All Union citizens within the meaning of Article 17(1) of the Treaty, and third-country nationals who are members of the family of a Union citizen exercising his or her right to free movement (Article 2 paragraph 5.a)
- third-country nationals and their family members, whatever their nationality, who, under agreements between the Community and its Member States, on the one hand, and those third countries, on the other hand, enjoy rights of free movement equivalent to those of Union citizens (Article 2 paragraph 5.b).

As noted the Regulation reflects the duality between different categories of third-country nationals: ordinary regime and privileged regimes.

Regulation 562/2006 in its Article 5 (as modified by section 1 point 5 of Regulation (EU) no. 610/2013<sup>4</sup> of 26 June 2013) sets out the conditions of entry for a stay in the territory of the Member States not exceeding 90 days within a period of 180 days. The conditions that must be met are as follows:

- a) the interested person must be in possession of a "valid travel document or documents authorising them to cross the border";
- b) to be in possession of a valid visa, if required pursuant to Council Regulation (EC) No 539/2001<sup>5</sup>, except where the interested person holds a valid residence permit;
- c) "to justify the purpose and conditions of the intended stay, and to have sufficient means of subsistence, both for the duration of the intended stay and for the return to their country of origin or transit to a third country into

<sup>2</sup> Council Decision 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 in Official Journal of the European Communities L 176/1, 10.07.1999.

<sup>3</sup> Licastro, «Il "Codice frontiere Schengen"», in *Diritto comunitario e degli scambi internazionali*, 2006, p. 587.

<sup>4</sup> Regulation (EU) No 610/2013 of the European Parliament and of the Council of 26 June 2013 amending Regulation (EC) No 562/2006 of the European Parliament and of the Council establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), the Convention implementing the Schengen Agreement, Council Regulations (EC) No 1683/95 and (EC) No 539/2001 and Regulations (EC) No 767/2008 and (EC) No 810/2009 of the European Parliament and of the Council, in Official Journal of the European Union L 182/1 datë 29.06.2013.

<sup>5</sup> Council Regulation (EC) 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, in Official Journal of the European Union L 081, datë 23.03.2001.

- which they are certain to be admitted, or are in a position to acquire such means lawfully”;
- d) not to be a person for whom an alert has been issued in the SIS for the purposes of refusing entry;
  - e) “not to be considered to be a threat to public policy, internal security, public health or the international relations of any of the Member States”.

The obligation to possess a visa on entry to the Schengen area, applies to nationals whose States are listed in Appendix 1 of Regulation 539/2001 recently amended by Regulation (EC) no. 259/2014. Article 1 bis based on changes made by Regulation (EU) 1289/2013 of the Parliament and Council dated December 11, 2013, regulates the functioning of a mechanism, which provides emergency situations suspension of exemption from visa obligation for nationals of third countries. In the end, letter b) of paragraph 1 of Article 5 provides for an exemption from the visa obligation for those nationals of third countries who hold a residence permit.

The evaluation of “sufficient financial means” should be based on the time and purpose of stay as provided in paragraph 3 of Article 5, which determines how to value the necessary financial means. Simultaneously Article 34 of the Regulation stipulates the obligation for Member States to communicate to the Commission the reference amounts required for crossing the external borders, fixed annually by the national authorities. Such a specification leads to non-uniform application of this criterion because the amount required may vary considerably between Member States. Besides the amounts of money and credit cards, the letters of guarantee issued by a person who invites a third-country national can serve as proof of financial availability.

The border guards also under the provisions of paragraph 2, may require third-country nationals supporting documents which are provided in a non-exhaustive list (Annex 1), to verify the respect and purpose and conditions of the visit.

The last condition required by article 5, paragraph 1 of Regulation 562/2006 which must be met by the third country national to enter the Schengen area is that the person “should not be considered to be a threat to public policy, internal security, public health or the international relations of any of the Member States. In terms of public order it should be noted the lack of a definition at Community level which would enable a material approximation of legislation of the Member States.<sup>6</sup> The one-sided character of this notion has found support from the community jurisprudence, under which the discipline in question is necessary “to leave the competent national authorities a discretion within the limits specified in the Treaty” and that in consideration of the fact that “the notion of public order varies from one State to another and from one era to another”<sup>7</sup>. The control exercised by the Court of Justice has allowed the determination of certain limitations facing the notion of public order. The threat to public health was not provided by the Schengen Agreements and it is an additional prediction made by Regulation 562/2006 which in paragraph 19 of Article 2 provides the definition of the used term.<sup>8</sup>

Paragraph 4 of Article 5 of Regulation 562/2006 provides for cases where States can avoid the conditions set out in paragraph 1 of Article 5 and to allow third-country national to enter their territory despite that does not meet all the laid conditions. In this way, a third-country national who, despite that does not meet all the requirements but who possesses a residence permit or a long-term visa to a State Party shall be allowed to enter in order to attain it transit to the territory of the State which issued a residence permit or visa. It can also be issued a visa at the border on the basis of Regulation 810/2009 and in this way to allow the entry of third country nationals who meet all other requirements except that spells of possession of a visa obligation specified in letter b) of paragraph 1. At the end it is provided that a member States for humanitarian reasons, national interest, or fulfillment of international obligations, may authorize the entry into its territory to nationals of third countries who do not meet one or more of the conditions of paragraph 1.

### 3. Entry for Stays over Three Months

The Community law does not disciplines entry for stays over a three-month term of third-country nationals. Section 2 of Chapter 3 of the Convention on the implementation of the Schengen Agreement which seeks visa for long term stays contains only Article 18 which provides that “ visas for stays exceeding three months shall be national visas issued by one of the Contracting Parties in accordance with its national law “. Such a visa recognizes to its holder the possibility of

<sup>6</sup> Condinanzi M, Nascimbene B., “Libera circolazione delle persone: Profili generali”, in “Trattato di Diritto Amministrativo Europeo”, Parte speciale, Tomo II, fq. 837.

<sup>7</sup> Court decision of 4 dicembre 1974, case 41/74, Van Duyn, in European Court reports 1974 Page 01337.

<sup>8</sup> ‘threat to public health’ means any disease with epidemic potential as defined by the International Health Regulations of the World Health Organisation and other infectious diseases or contagious parasitic diseases if they are the subject of protection provisions applying to nationals of the Member States.

transiting the territory of other Contracting Parties if it meets the conditions required for issuance of a short-term visa and does not result in a list of persons signaled by the State in whose territory requires to transit. It can be seen clearly that this type of visa is not considered a uniform visa.

After the repeal of Regulation no. 1091/2001 which modified the Article 18 of the Convention of implementation, the latter will be amended by Regulation (EC) no. 265/2010<sup>9</sup> of the European Parliament and Council of 25 March 2010. Visas for stays over three months remain permanently national visas are issued under domestic law or European Union legislation. Despite these visas remain national visas, meaning that Member States themselves decide the terms of issue of such visas, the Regulation in question brings harmonization as regards their format. Article 18 of the Convention of implementation after the modification by the Regulation stipulates that long-term visas are issued on the basis of uniform model provided by Regulation (EC) nr.1683 / 95 of the Council and should be supplemented by provisions set out in Annex VII to Regulation (EC) no 810/2009 of the Parliament and the Council which has created a visa Code.

#### 4. EU Legislation Concerning the Movement of Third Country Nationals

The movement of nationals of third countries is not disciplined by Regulation 562/2006. This regulation regulates only the removal of controls at internal borders, conditions of entry into the Schengen area and controls at external borders. In anticipation of a reform in the discipline, the circulation of third-country nationals in the Schengen area is disciplined by articles 19-25 of the Convention implementing the Schengen Agreement.

Based to Article 19 of the Convention, "aliens" who hold uniform visas and which fulfil the entry requirements provided for in Article 5, paragraph 1, letters a), c), d) and e) and have legally entered the territory of a Contracting Party, "may move freely within the territory of all Contracting Parties for the period of validity of the visa".

Article 20 provides that in the same conditions can move freely even "the aliens" who do not have the obligation of possession of a visa when crossing the border. These persons fulfilling the conditions of Article 5 can move for a maximum period of three months within a period of six months from the date of first entry. For this category of foreigners, the provision in question provides the possibility of an extension beyond the three months period of residence in its territory by one of the signatories.

Freedom of movement for a period not longer than three months is allowed even to foreigners who possess a residence permit, a temporary residence permit and a travel document issued by a signatory party, if it meets the conditions set out in paragraphs a), c) and e) of Article 5 paragraph 1 of Regulation 562/2006 and it is not on the national list of persons signaled by the Member State concerned.<sup>10</sup> This provision conforms with the Charter of Fundamental Rights of the European Union which in Article 45.2 provides that "*freedom of movement and residence may be granted, in accordance with the Treaties, to nationals of third countries legally resident in the territory of a Member State*".

To article 21 of the Convention after the change undergone by Regulation (EU) no. 265/2010 of European Parliament and Council of 25 March 2010 has been added a paragraph 2-bis, which provides that the freedom of movement provided for in paragraph 1, shall be applied to aliens who hold a valid long-stay visa issued by a Member State in conformity with the provision of Article 18 of the Convention. The latter one after modifications by the Regulation no. 265/2010 provides that the term visa over three months (long-term visas) are national visas and are issued based on a uniform visa model established by Regulation (EC) no. 1683/1995 and are completed by the provisions of Regulation (EC) no. 810/2009 (Visa Code).

#### 5. The Development of Albanian Legislation on Foreigners

Until the beginning of the 1990s, Albania had been the least known and the least accessible country in the world for more than four decades<sup>11</sup>. After 90 years, Albania will return to a country of emigration (country of origin). For this reason the policies will be more oriented to an immigration regulation and protecting the interests of Albanian nationals living abroad. The immigration found adjustment by law no. 7939, 1995 "On Migration" that summed up in a single text provisions to regulate emigration, immigration, asylum and refugees. The objective of the law was to regulate the entry of persons in

<sup>9</sup> Regulation (EU) No 265/2010 of the European Parliament and of the Council of 25 March 2010 amending the Convention Implementing the Schengen Agreement and Regulation (EC) No 562/2006 as regards movement of persons with a long-stay visa, in Official Journal of the European Union L 85/1, 31.3.2010.

<sup>10</sup> Article 21.1 Convention implementing the Schengen Agreement of 14 June 1985.

<sup>11</sup> Blejer, M., Mauro Mecagni., Ratna Sahay., Richard Hides., Barry Johnston., Piroška Nagy., and Roy Pepper (1992) 'Albania: From Isolation Towards Reform', Occasional Paper No. 98, Washington: International Monetary Fund.

the Republic of Albania, and their exit from it, as well as regulate the issuance of visas, residence permits and work, conditions and procedures for admission and deportation of immigrants (Article 1). Subject of the law were Albanian citizen and "foreign". Law 1995 in Section 5 provide definitions of terms: the migration understood simultaneously two terms: emigration and immigration. Law of 1995, is credited for the first time, regulates the regime of foreigners in the territory of Albania. This law based on important principles international conventions but not observed the impact of Community law.

After the adoption of the Constitution of 1998, and due to developments migration phenomenon, the 1995 law was repealed and divided discipline was conceived, where regulated by special laws: emigration<sup>12</sup>, asylum and foreigners<sup>13</sup>. The immigration will be regulated from law "On Foreigners" of 1999, and from normative acts in accordance with it, such as the Council of Ministers Decision no. 439/2000, "the entry, residence and treatment of foreigners in the Republic of Albania"<sup>14</sup> and Decision of the Council of Ministers for issuing work permits to foreigners nr.262/2002.

The European Union, at the Zagreb Summit of November 2000, launched the Stabilisation and Association Process for five countries of Southeast Europe, including Albania. The process of integration sets clear obligations for States that have made the membership request. The approximation of legislation with the Community *acquis* is one of the conditions to be met by these countries and this obligation is expressly defined in Article 70<sup>15</sup> of Stabilization and Association Agreement between Albania and European Union. Article 80 and 81 of agreement determines an obligation of collaboration in the field of migration, respectively, article 80 determines "*The Parties shall cooperate in the areas of visa, border control, asylum and migration and shall setup a framework for cooperation,...* Cooperation shall be based on mutual consultations and close coordination between the Parties and shall include technical and administrative assistance for: the drafting of legislation; the security of travel documents and detection of false documents and the border management. The collaboration should be focused in the field of asylum, in the field of legal migration, on admission rules and rights and status of the person admitted. Special procedures for the reacceptance of nationals, nationals of third countries and persons without nationality, are determined in the framework of agreement between European Community and Albania on the readmission of persons residing without authorization, signed on April 14, 2005<sup>16</sup>.

Regarding the discipline of immigration law nr.8942 of 1999 and other normative acts in pursuance of his own present major deficiencies as noted in the Stabilisation and Association Report 2003 for Albania<sup>17</sup>. In this report the Commission has suggested possible harmonization of legislative changes, institutional strengthening, in particular, through a clear definition of main institutions roles and appropriate training regarding migration issues. The Albanian law nr.8942 in 1999 did not comply with the Community *acquis* not only in the aforementioned cases but present deficiencies in all discipline areas (visa, entry, exit, acceptance, and attitude of foreign citizens)<sup>18</sup>.

In an effort to aligning the legislation with European and international standards, and the implementation of Migration Strategy and its Action Plan (approved in 2005), is designed New Law on Foreigners on July 17, 2008<sup>19</sup> that would invalidate the law of 1999 and all existing bylaws and will bring a new normative basis for foreigners. Law no. 9959 divided into 11 chapters has 153 articles and has as its object the regulation of entry, residence, employment regimes, and treatment and exit of foreigners in the Republic of Albania<sup>20</sup>. With the approval of the legal basis, Albania intends to fulfill required standards provided in the framework of the European Union *acquis*. Law no. 9959 respectively

<sup>12</sup> Law no. 9034/2003 "On the immigration of Albanian citizens for employment purposes", Constitution of Republic of Albania

<sup>13</sup> Law no.8942 date 27. 09.1999 "For foreigners"

<sup>14</sup> Changed with the decision of 532/2001, 669/2001, 253/2002, 220/2003, 670/2004,146/2005.

<sup>15</sup> Article 70 ASA: "The Parties recognize the importance of the approximation of Albania's existing legislation to that of the Community and of its effective implementation. Albania shall endeavor to ensure that its existing laws and future legislation shall be gradually made compatible with the Community *acquis*. Albania shall ensure that existing and future legislation shall be properly implemented and enforced".

<sup>16</sup> Agreement between the European Community and the Republic of Albania on the readmission of persons residing without authorization in Official Journal L 124, 17.5.2005, p. 22–40.

<sup>17</sup> Commission of the European Communities, "Report from the Commission - The Stabilisation and Association process for South East Europe - Second Annual Report. " COM/2003/0139 final, Brussels, 2003.

<sup>18</sup> For a full analysis of the gaps, see report prepared by independent consultants of the International Organization for Migration (IOM). "Analysis of the Albanian Legislation and Practice of Immigration compared with EU and those International standards " Tirana, January 1, 2004.

<sup>19</sup> Law.no. 9959, date17. 7. 2008 "Për të huajt", në Fletoren Zyrtare nr. 124, datë 1 Gusht 2008, faqe 5479.

<sup>20</sup> Article 1, of Law no. 9959/2008.

approximates Albanian legislation is in accordance with Council Directive 2005/71/KE<sup>21</sup>, Council Directive 2004/82/KE<sup>22</sup>, Council Directive 2004/81/EC<sup>23</sup>, Council Directive 2004/114/ EC<sup>24</sup>, Council Directive 2003/109/ EC<sup>25</sup>, Council Directive 2003/86/KE<sup>26</sup>, Council Directive t 2000/78/ EC<sup>27</sup> and Council Directive 96/71/ EC of European Parliament and the Council<sup>28</sup>. The law came into force in December 2008 while in 2009 the EU *acquis* will be enriched with three Directives<sup>29</sup> and the Regulation of European Parliament and Council no. 810/2009<sup>30</sup>.

For fully approximation of Albanian legislation with the aforementioned acts and other acts adopted after 2008 by the EU and by following the suggestions of Experts on the EU and international organizations as PAMECA and OIM on March 28, 2013, Albania adopts new law no. 108 "On foreigners"<sup>31</sup>. The new law repeals the law 9959 of 2008 and all acts that were contrary to it and brings a comprehensive approach to legislation with community acts and filling some deficiency or discordance that were from law no.9959.

## 6. Entry and Residence of Foreigners under Albanian Legislation

The objective of the Law no. 108 of 2013 is the regulation of regimes of entry, residence, employment and exit of foreigners from the Albanian territory. From the first articles, the law distinguishes between categories of foreigners in the ordinary regime and those in privileged regime, using in this way the same dualism that uses the community law. Article 1 provides that for nationals of countries that have reciprocal agreements with Albania, can be applied a special regime more favourable provided in these agreements. In determining subjective field of application, the law also states that its provisions regarding the residence are not applicable to diplomatic personnel and their families.

Regarding the term "foreigner", such is any person, with or without citizenship, who, under the law, is not an Albanian citizen. Community legislation is applying a differential regime from the usual for third-country nationals who enter the territory of the Community for family reunification and the Albanian legislation makes this differentiation by putting them in a privileged regime.

Chapter II of the Law 108/2003, divided into two sections, regulates the entry of foreigners into Albanian territory. Section I (Articles 6-13) regulates the general conditions of entry, while Section II (Articles 14-19) determines provisions on travel documents.

Article 6 defines the criteria that a foreigner must fulfil to enter the Albanian territory. The foreigner must: a) possess a passport with a validity of at least 3 months prior to its completion; b) be equipped with an entry visa if required, or a valid residence permit; c) not constitute a threat to public order and safety, national security and international relations not to affect Albania with other countries; d) not have records in the national electronic register for foreigners to limit his entrance; d) not pose a risk to public health in the Republic of Albania; f) not be a debtor to

<sup>21</sup> Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research. CELEX 32005L0071, Official Journal, L 289, 3.11.2005, p. 15–22.

<sup>22</sup> Council Directive 2004/82/EC of 29 April 2004 on the obligation of carriers to communicate passenger data CELEX 32004L0082, Official Journal, L 261, 6.8.2004, p. 24–27.

<sup>23</sup> Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities. Official Journal L 261, 06/08/2004 P. 0019 – 0023.

<sup>24</sup> Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service. CELEX 32004L0114, Official Journal L 375, 23.12.2004, p.12–18.

<sup>25</sup> Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents CELEX 32003L0109, Official Journal L16, 23.1.2004, p. 44–53.

<sup>26</sup> Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification CELEX 32003L0086, Official Journal L. 251, 03.10.2003p. 12–18.

<sup>27</sup> Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation. CELEX 32000L0078, Official Journal, L 303, 02.12.2000, p.16–22.

<sup>28</sup> DIRECTIVE 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services. CELEX 31996L0071, Official Journal L 018, 21/01/1997 P. 0001 – 0006.

<sup>29</sup> Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals. Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals".

<sup>30</sup> Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code), Official Journal L. 243, 15.9.2009, p. 1–58.

<sup>31</sup> The text of Law in: [http://www.punetebrendshme.gov.al/files/documents\\_files/13-11-14-04-05-08ligji\\_per\\_te\\_Huajt.pdf](http://www.punetebrendshme.gov.al/files/documents_files/13-11-14-04-05-08ligji_per_te_Huajt.pdf).

administrative measures imposed on him under the provisions of this law.

Despite the term of stay, short- term stay or long- term stay, foreigners wishing to enter the territory of Albania must fulfil the above conditions of stay. Section 6 provides an exemption from fulfilling these conditions only for asylum seekers and nationals of countries with which Albania has agreements and when in these agreements is provided otherwise. It's a logical exception, because it cannot be refused the entry of the person whose life or his freedom may be threatened because of race, religion, nationality, membership of a social group or political opinion. If this were to happen then Albania violates the international norm of non- *refoulement*, a principle of general international law but also provided by Article 33 of the 1951 Convention on the Status of Refugees, but as interpreted by the Strasbourg Court and Article 3 the European Convention of human Rights, to which Albania is a party.

According to conditions of entry it is noted that the law No. 108 in general defines the same conditions provided by Regulation (EC) no. 562/2006 of the European Parliament and the Council. Normally there are differences as the regulation in question regulates only the entries for short- term residence in the territory of the Community, while the Law No. 108 regulates the entries for any reason as well as for long term residence, highlighting that Community law does not discipline visas for long- term stays, because it remains within the competence of the Member States.

The first condition to be met by a foreigner to enter the territory of Albania is the possession of a travel document with a validity of at least 3 months prior to its completion. This is a defining condition and Article 5 of the Regulation. Regulation no. 562/2006 in June 2013 has undergone a change of Regulation (EC) no. 610/2013<sup>32</sup> which in addition to 3-month period before the date of completion has also added the requirement that the document must be issued no earlier than 10 years. This condition was not reflected in the Law no. 108, which entered in force in March, while the modifying Regulation entered in force in June 2013.

According to the second condition, the possession of a visa if required, Albanian law as well as community legislation make division of foreigners into two categories: those that need a visa to enter and foreign nationals who are exempt from obligation of issuing visas for stays not exceeding 90 days within a period of 180 days. Article 30 of the law provides that the list of countries, whose nationals can enter without a visa in the Republic of Albania, is approved by the Council of Ministers. It is approved the decision of the Council of Ministers no. 513 dated 13.06.2013<sup>33</sup>, which defines the countries whose nationals are exempt from the obligation of issuing visas, to the implementation of the law. The method used is that of the two lists, the same used by Regulation (EC) no. 539/2001<sup>34</sup>. On the one are listed the countries, whose nationals have the obligation of possession of a visa on entry, and the on the other list are listed the countries whose nationals do not have the obligation of possession of a visa for entry to 90 days within a period of 180 days. Article 30 also provides that it can be avoided the 90-day deadline for those foreign nationals whose countries have reciprocity agreements with Albania which provide for different periods of residence. As provides the Regulation (EC) no. 810/2009, which creates community visa code, there are exempted from visa possession the diplomatic passport holders and members of the crew of the aircraft, as well as Albanian law exempts these two categories.

The provisions of items c), d) of the law along with item d), that determine that the foreigner should not have records that limit his access to the national electronic register for foreigners, are in function of maintaining the public order. This register is created and works since 2010 by a jointly instruction of the Minister of Interior, Minister of Foreign Affairs and the Minister of Labour, Social Affairs and Equal Opportunities and consists of several modules, one of which is dedicated to the treatment of foreigners irregularly staying in the territory. In fact, this condition has replaced two conditions set by the previous law no. 9959 of 2008 under which a foreign should not be subject to a removal order, forced removal, deportation or prohibition to enter or stay in the Republic of Albania and should not have been declared *persona non grata*. In fact it is only made a substitution after these people can be marked in the national electronic register in order to limit their entry.

The condition set out in paragraph c) of Law No. 108, is provided by Community legislation Article 5 paragraph e) of Regulation 562/2006. It should be emphasized that this provision leaves a large space of discretion to responsible authorities, because they are themselves which make assessment of the threat of a foreign person. Also item e) of Article 5 of the Regulation provides that the foreign shall not constitute a threat to public health, a provision used in item d) of Article 6 of the Law no. 108. This was not predicted by previous law no. 9959 of 2008 which regulated the discipline. Regarding the definition of the term "public health threat" it exists a pronounced difference between the Albanian legislation and the community law. In fact, Article 2 of Regulation 562/2006 states that it is considered a "threat to public

<sup>32</sup> (EU) No 610/2013 of the European Parliament and of the Council of 26 June 2013, in Official Journal L 182, 29.6.2013.

<sup>33</sup> *Vendim i Këshillit të Ministrave nr. 513 datë 13.06.2013, në Fletoren Zyrtare nr. 110, datë 07/12/2013, fq. 4783.*

<sup>34</sup> *Council Regulation (EC) 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, in Official Journal L81/1, 21.3.2001.*

health" any disease considered as a potential for epidemic spread by international regulation of health and the World Health Organization, or other infectious diseases that are subject to the provisions safeguards applicable to nationals of member countries. While the Albanian law does not provide a definition of this notion but in Section 4 is limited only to the determination of the state authority responsible for assessing the risk to public health, which identifies the Ministry responsible for health. By not giving a definition of the notion, the law no. 108 leaves discretion to responsible authority to determine when a foreigner can be considered as a threat to public health.

Finally it should be noted that based on the provision of item e) of Article 6 of the Law no. 108 to foreigners, based on a case by case assessment, may be required submission of additional documents, the type of which are approved by the Council of Ministers. In fact this is a provision made even by the Community legislation, which clarifies that these additional documents enables the verification of compliance of the conditions of entry. The Decision of the Council of Ministers no. 513 dated 13.06.2013 has defined additional documents that may be required, listing a series of documents that are found in Annex I of Regulation 562/2006 of Community legislation. In fact, Community legislation stated expressly that the foreigner must possess the necessary financial means for the period of stay and return to the country of origin. Albanian law has used this provision in Article 13 dedicated to financial guarantees, while its Article 12 provides the possibility of invitation from an Albanian national, who goes on this way gararant to meet the financial costs of foreign nationals.

The Law no. 108 differently from the law no. 9959 of 2008 which regulated the discipline previously, has been significantly adapted to Community legislation concerning the conditions of entry.

On the other hand regarding travel documents and visas Law no. 108 in contrast to the previous law is fully accommodated to the community legislation and in particular to Regulation no. 810/2009 dated 13 June 2009 "On the establishment of the Community Code on Visas". The new law defines in this way the same procedure and fulfillment of dissimilar conditions for issuance of a visa. While on the other hand it provides different types of visas, according to the purpose of stay, same as Regulation no. 810/2009. Thus visas issued for entry and stays in Albanian territory are three types: type A visa which is aeroportual transit visa. Unlike the law no. 9959 which provided that it was an entry visa, the new law provides that with the fulfillment of certain conditions specified in Article 20, the visa can be multiple entry and valid for 6 months, being thus fully conform with Article 26 of Regulation no. 810/2009; Type C visa which gives a right of entry and residence in the territory of Albania for 90 days within 180 days from the date of first entry. This visa can be single entry or multiple entry when the conditions of Article 21 are fulfilled. Visas with multiple entry may be valid for a period ranging from 6 months to 5 years. Article 21 calls the same conditions defined by Article 24 of Regulation no. 810/2009; Type D visa, which is given to foreigners seeking to stay in Albania for a period of 90 days within the superior 180 days. Community legislation does not discipline the conditions of issuance of such visas once considered national visas as competence of the Member States. Albanian legislation on the basis of the purpose of entry visas divides in these visas: a) economic activity "D / AE"; b) professional activity "D / AP"; c) commercial activity "D / AT"; d) employment activities "D / APU"; d) study purposes "D / ST"; f) family reunification "D / BF"; e) charitable or religious activities "D / VHF"; h) diplomatic visa or service visa "D / DS"; f) visa for seasonal employment purposes "D / SP"; g) visa for humanitarian reasons "D / H".

Law no. 108 is fully adapted to Regulation no. 810/2009 (visa code) not only in terms of the type of visas, but also in terms of procedures and conditions of their release. In fact one of the purposes of adoption of the new law, as defined in its entrance, was the total adaption to this Regulation and Community legislation in force.

Law no. 108 of 2013 has amended the discipline of residence permits in Albanian territory. Previous Law no. 9959 of 2008 provided permits of only three types: a) within 3 months, 6 months or 1 year, which may be renewed no more than 5 times in a row; b) 2 years time, which may be renewed not more than once; c) permanent, if the foreigner has legally resided for five consecutive years in Albania and has relations or activity in the country. As noted the discipline differed greatly from that of community. The new law has changed the discipline and Article 33 defines the types of residence permit: a) type "A" permit, non-renewable, which entitles the holder to stay in the Republic of Albania within the period of time for which it issued; b) type "B" permit, renewable, and issued with fixed term and entitles the holder to enter, stay and exit to / from the Republic of Albania within the time specified therein; c) type "C" permit, which may be for permanent term and entitles the holder to enter, stay and exit to / from the Republic of Albania; d) type "S" permit, renewable after a 6-month break, which is issued for seasonal workers and gives the holder the right to enter, stay and exit to / from the Republic of Albania within the time specified in to it; d) "Blue Card AL" permit, renewable, which is issued with fixed term only for highly skilled employees and entitles the holder to enter, stay and exit to / from the Republic of Albania in terms set in; f) "AL-C Blue Card" permit, which is issued to permanent term only for highly skilled employees and entitles the holder to enter, stay and exit to / from the Republic of Albania. Law no. 108 of 2013 is adapted completely with the community legislation and more specifically with: Council Directive 2009/50 / EC, dated May



25, 2009 "On the conditions of entry and residence of third-country nationals working order highly qualified; Council Directive 2005/71 / EC dated 12 October 2005 "On the specific procedure for admitting third-country nationals for the purposes of scientific research"; Council Directive 2004/81 / EC dated 29 April 2004 "On the residence permit issued to third country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities; Council Directive 2004/114 / EC, dated 13 December 2004 "On the conditions of admission of third-country nationals for the purpose of study, student exchange programs, free training or voluntary service"; Council Directive 2003/109 / EC, dated 25 November 2003 concerning the status of third country nationals who are long-term residents; Council Directive 2003/86 / EC, dated September 22, 2003 "On the right of family reunification.

## 7. Conclusions

The immigration discipline in Albania has developed only recently, for almost 20-years. After an initial period which starts with Law of 1995 where the Albanian legislation had no minimum influence from Community legislation and the aim of the first norms of the immigration discipline was the setting of certain international standards on immigration and asylum, with the law of 2008 starts the period of the harmonization of Albanian legislation in the discipline of immigration with *acquis* communitarian, and this came as an obligation of integration process that had begun, and obligations arising from SAA. The law no. 9959 of 2008 marked progress on harmonization with Community legislation, however, as discussed in the paper and it still remains far away especially in the sectors of entry, residence and visa.

To fulfil the obligations and owing to the development of the *acquis* of the European Union on March 28, 2013, Albania will approve a new law (nr. 108/2013) on immigration discipline. This law, which replaced the previous law, has regulate the whole discipline on entries, visas and stay in the territory of Albania, performing an almost complete harmonization and making Albania one of the countries with the most advanced legislation in immigration discipline. However, if it can be concluded that it is a full harmonization related to the discipline of residence and visa, it can still be observed some material changes concerning the conditions of entry of foreign nationals, which basically does not create a difference in application, but require intervention of the legislator to perform material changes that would bring the law no.108 / 2013 in a complete adaption with community legislation and with the discipline regarding the entry of foreign nationals.

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