

## Free Movement of Persons and the Implementation of EU Visa Liberalization Agreement with Albania

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**Abstract** *The main focus of the analysis will be the migration policies within the EU, the free movement principles and restrictions that may be imposed to individuals by presenting an overview of the readmission policies in contemporary Europe and the effect that they bring to the field of migration, the international obligations of states and international acts to which they rely. A special attention in this paper is paid to the analysis of the Albanian legal framework and its attitudes toward the phenomenon of migration and free movement of persons. States have the right and the duty to control migration. But in doing so they must keep reminding their citizens on why at least some immigrants are needed and should be welcomed, and, true to Europe's humane values, they must respect the fundamental rights that belong to every human being, independently of their nationality, religious believe and socio-economic and cultural background. A specific focus in the paper will also be paid to the implementation of EU visa liberalization agreement with Albania, the issue of asylum seekers, as well as addressing the problems that serve as their motivation, aiming at the conclusion that being a European citizen means being a member of a community based on full enjoyment of individual rights, as well as tolerance, mutual respect and acceptance of diversity. It also means accepting certain obligations in respect of others, complying with the rules of democracy and contributing to the development of a fair and cohesive society.*

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### Introduction

Movements of people in general, occur when a person, a family, a group of people or an undefined number of people for different reasons, such as: political, economic, war, etc., leave their country of origin and move to another country, either temporarily or permanently. As such, there was the readmission or refoulment of certain people or groups of people from one country to another.

Migration is an ancient phenomenon, but for the first time in an organized manner begun after the First World War, where migrations were common in frequency as well as in quantity. In this period mass of people migrated not only from one European country to the other, but also across the ocean by going to the U.S., Australia, Latin America and Canada. These countries were not affected by wars and had large areas of free land, and were sparsely populated.

This kind of migration continued even after World War II and it is in this period that were founded the first bodies to deal with the international regulation of migration. But beside the planned and organized movements of population from international organizations, the spontaneous movements, disorganized or clandestine ones are also happening and seem inevitable. Various studies show that about 70% of foreigners enter illegally in the OECD countries where they stay.

Readmission and refoulment from and to a country often go in conformity with each other. In cases of conflict, people are forced to leave the country for a major reason and of course after the change of the situation and the conflict resolution, their return is possible and undeniable. These readmissions are inevitable and not necessarily the conclusion of an agreement.

Nowadays, the concept of free movement of individuals has changed completely. This concept has evolved in the framework of relations established between the individual and the state, as well as between the States themselves. It is a right and an obligation that must be respected at the same time. The approval and adoption of Helsinki Final Act is based on all recognized principles of international law, one of which is that of equal sovereignty of countries and respect for the rights deriving from this sovereignty.

In the Helsinki Final Act provisions, in accordance with the United Nations Charter, the reciprocal relationship between states is assured by improving the security and cooperation process between them. Helsinki Process offers to the participating countries a communication channel, a prescriptive code of conduct (for inter-state and intra-state relationship) as well as long term cooperation. This Act expanded the scope of inter-state relations by introducing new areas of cooperation, among which, human rights and protection of free movement of persons.

Considering that international relations should include a "human dimension" for the benefit of the individual, the commitments in this area become matters of legitimate concerns to all participating countries and not exclusively to the internal affairs of a state. Free movement of persons is one of the most discussed issues in the world.

Referring to the cooperation between states in various fields such as: trade, tourism, economic cooperation, education, cultural activities, sports, etc., freedom of movement is considered not only as an individual right but as a collective right belonging to the state. Thus, the state should create appropriate conditions for movement not only of its own nationals, but also for the foreigners who enter its territory. In this context, in addition to rights, there are mutual obligations, the fulfillment of which creates the basis of trust and common operations, not only between neighboring countries, but also in the region and beyond.

To this end is required to have a well-organized border control system, valid travel documents, exchange information on legislation for the treatment of foreigners and the existence of efficient structures for the prevention of human trafficking, the legal basis to readmit own nationals and third countries nationals when crossing illegally the territory of another state, as well as the harmonization of the legislation and practice regarding the asylum seekers and refugee status.

Sometimes it is evidenced a conflict between free movement principles and limitations imposed by any state to individual countries. To deviate from this conflict the origin country ought to try to improve the political stability and to effectively fight against illicit human trafficking. The recent initiatives of the European Union consists in creating a legal framework and effective structures for prevention human trafficking and the conclusion of readmission agreements with third countries, by controlling and limiting in a way the free movement of individuals.

Albania is fully committed to create the necessary legal and structural in meeting the necessary standard cooperation with the countries of the region and beyond. Its approach in regard to strengthening the border control, cooperation in the fight against trafficking, the conclusion of readmission agreements and facilitation of the free movement of its citizens, is also consistent with Albania's policies for the region.

Albania has taken concrete steps in the adoption of the Law on Foreigners and all necessary acts to implement its laws in conformity with international law. It is also in the process of conclusion of the readmission agreements with third countries, while not lacking bilateral and multilateral diplomatic contacts in order to facilitate the realization of the free movement of citizens from one country to another.

## Migration policy

The principle of free movement of individuals, although provided in many international instruments, is a fundamental right which must be respected by any person or authority. With the aim to be effectively respected, the states must establish the basis for the implementation of this right. Meeting the criteria consists in having a harmonized system of migration policy, treatment of foreigners, visas and procedures for the movement of foreigners.

Albania is fully committed to respect all international obligations dealing with free movement of individuals, doing step by step adjustment of internal legal procedures in conformity with the international ones, taking part actively in all regional initiatives, providing information needed in this area and putting in practice all the commitments. Albania is aware of the fact that there might need to cope with the negative effects of the irregular movements of people.

Based on the National Strategy on Migration<sup>1</sup>, and obligations arising from the implementation of SAA<sup>2</sup>, the Albanian government seeks a constructive management and control of migratory flows, in the interest of internal stability and economic prosperity, which would contribute to the greater use of the best human resources available on a flexible labor market and to increase the opportunities to enter into formal agreements, individual or collective, with other European countries.

In this regard it is required a commitment to equal treatment of citizens of other countries who are legally resident in the territory of the Republic of Albania, through the approximation of legislation with European standards. The same commitment is required for the respect of the rights of the Albanian emigrants in the countries where they live, demanding equal treatment and respect of international standards in this field.

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<sup>1</sup> Approved by the Council of Ministers Decision no.760, 19.11.2004

<sup>2</sup> Articles 46, 48 and 80 of SAA

## European Union, enlargement and readmission policies

European Union, through its institutions, is working to integrate all Balkan countries into the European family. And the fact is that this family is growing. Thus, Poland, Czech Republic, the Republic of Hungary, Estonia and Slovenia have become European Union member.

This fact implies that the right of free movement within the European Union will be guaranteed to all citizens of new members countries. However, free movement cannot always be guaranteed since the first day of membership. A transition period can be provided, as it was the case of Greece, Spain and Portugal, where a 7-year period it was considered necessary, in terms of accession to European Union treaties.

The implementation of the Schengen Agreement (initiated in 1985 and in force from 1990) is indicative of a number of positive developments in terms of common migration policy such as:

- Harmonized policy in the issuance of visas;
- Legal Cooperation in admission procedures and extradition;
- Effectiveness in terms of legal obligations that govern cross-border transfer and detention of wanted persons;
- Cooperation in the fight against trafficking of drugs;
- Elaboration of common information center and updated information in computerized system.

Only in the last 10 years, 70 acts have been adopted on immigration and asylum, some of them binding and enforceable (e.g. Dublin Convention: provides procedures for acquiring the status of asylum, police cooperation, fight against illicit trafficking people, drugs, etc..) which, almost all include provisions in their content of readmission between the European Union countries and associated countries and their neighboring countries, aiming at creating a collective and harmonized European regime.

The Amsterdam Treaty aims to harmonize the will of the states for cooperation and interaction. The transfer of state sovereignty into interstate structures, of course, requires the development of a process that requires trust in the capability and ability of intergovernmental structures, while at the same time preserving the vital interests of states and respecting "Burden-sharing" in the same way.

The readmission agreements concluded from Albania provide in their content, not just the return of Albanian nationals who illegally entered the territory of other States, but even third-country nationals who have entered through the territory of the Republic of Albania to the territory of other States.

The immediate change in economic conditions, unemployment and the need for higher living standards, caused a considerable number of Albanians to leave their own country. They mainly migrated to neighboring countries, Italy and Greece, but also in other European countries like the Federal Republic Germany, Belgium, Switzerland, UK, etc.

## Implementation of EU visa liberalization Agreement

With the Commission Statement of 8 November 2010 the citizens of Albania and Bosnia and Herzegovina holding a biometric passport enjoy visa-free travel to the EU Member States from 15 December 2010, in accordance with Regulation 539/2001<sup>3</sup>.

The decisions to grant visa-free travel to citizens of these Western Balkan countries were based on thorough assessments of the progress made in the areas of document security, border management, asylum, migration, fight against organised crime and corruption, and protection of fundamental rights, as required by the roadmaps for the visa liberalisation (Commission Staff Working Paper, SEC 2011, 1570 Final).

In order to identify and evaluate the liberalization of the visa process which started on December 12, 2010, based on some concerns and issues of emerging especially in September 2011 was set up a Task Force<sup>4</sup> to monitor the process of visa liberalization with the EU, headed the Ministry of Interior and with the participation of the Ministry of Foreign Affairs and State Police. The tasks and goals of this Task Force is the cooperation of all structures and law enforcement agencies related to the process.

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<sup>3</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 (OJ, L 81, 21.3.2001, p. 1).

<sup>4</sup> By Order of Prime Minister No.92, November 4, 2011

Activities of the Task Force focused on: Improving the system of collecting and managing information and data of interest to the monitoring process; informing citizens about the regime of visa-free movement; increasing the cooperation between the state structures and agencies responsible for the progress of visa-free process, as well as those structures not associated with the process such as transport companies and travel agencies, improving thus the system of prevention of abuse and enhancing the efficiency of system response to negative events and incrimination of all those who promote and support the misuse of the process through illegal activities.

The work of the Task Force consist in establishing a procedure of daily information of all members of the Task Force by the Department of Border and Migration Control on statistical data regarding the number of citizens who leave Albania using biometric passport; the number of Albanian citizens who are not allowed to leave the Republic of Albania by our authorities for not meeting the conditions for crossing the border; the number of Albanian citizens who have passed the state border to the EU countries after 15 December 2010 and have been deported from these countries for the violation of staying periods, reasons for other forced returns, etc..

The results of the Task Force during this period are to be commenced not only for the identification of the problems in the free movement regime but also for the positive effect it has had in raising the awareness of the citizens regarding visa-free regime conditions. Also the process of interviewing Albanian returnees is improved. The structures of Border and Migration Police today have a detailed database not only the cases of returns and the selection of returnees, but also the modus operandi, justifications used by Albanian nationals to stay illegally in the EU countries, seek asylum or other cases involved in criminal activities. In all cases, these Border Police structures cooperate with other specialized services of the state police for the identification of the potential perpetrators, their aids or other implicated people in the production of counterfeit documents.

At the same time these structures are focused in identifying problematic or illegal activity of Albanian citizens outside the territory of the Republic of Albania in order to share the following with the police authorities of these countries as regards the forged documents or countries abroad from where passed illegally.

As result it can be noticed an increased border control for the Albanian nationals who leave the Republic of Albania towards the EU countries and especially to the countries with high risk of migration such as Belgium and Italy. Only during the months of October, November and December 2011, the structures of the Border Police and Migration prevented to exit from the Republic of Albania 736 Albanian citizens on the basis of existing information to TIMS system which provides information for the consumption of staying time in the EU area, of unaccompanied minors, and when they do not fulfill additional conditions that may be sought in place of arrival, based on Article 17 paragraph 1 of the Constitution and of the Article 6, paragraph 5 and Article 13, paragraph 1 of Law no. No. 9861, dated 24.1.2008 "On State Border Control and Supervision"

All information provided, either through documentation accompanying the returnees, or by interviews is registered in TIMS system, enabling the continuation of consultations by all Border Police services, including those in all the border points, by preventing from traveling abroad of the Albanian citizens whose have been banned the entry in 28 EU countries.

To those Albanian citizens who were forced to return from EU countries on the grounds that they were illegally residing in these countries and/or proved that they have crossed illegally the Albanian border in the direction of EU since December 15, 2010, have been applied sanctions specified in the Criminal Code of the Republic of Albania. Thus, during the period from October to December 2011, for illegal border crossing has started criminal proceedings for 25 nationals and were fined administratively for the period of October-December 2011 about 700 people.

### **In following-up visa liberalization<sup>5</sup>**

Albania is fully committed to ensure respect of the conditions associated to visa liberalization, a process which has fulfilled its main objectives: facilitating of people-to-people contacts and enhancing business opportunities and cultural exchange. Since its entry into force on 15 December 2010 until March of 2012, the implementation of the visa free regime by Albanian citizens has been very smooth. A considerable increase of the number of asylum seekers from Albania, mainly in Belgium and Sweden, was detected during the months of September, October and November 2011. This number fell considerably in December 2011 and the first three months of 2012. According to the Belgian authorities the number of asylum requests by Albanian nationals fell from 342 in October to 96 requests in November, to reach 38

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<sup>5</sup> European Union-Albania Stabilization and Association Committee, Third Meeting 18-20 March 2012

requests in January 2012. The positive trend of reduction of numbers of asylum seekers continues as such for February there are only 31 requests.

### **Fight against organized crime**

There has been progress regarding international cooperation, such as with EUROPOL by securing a link of communication and a bilateral agreement signed in November 2011, increasing significantly the number of requests for strategic information and data between Europol and Albania.

There is an increase of efficiency of structures involved in the fight against illegal trafficking shown by the number of criminal offences investigated as well as the increase of international cooperation operations. During 2011 there was an increase in the effectiveness of the fight against illegal trafficking with 186 investigated criminal offences more than in 2010. In the same way the number of persons detected as implicated in illegal trafficking during 2011 compared with 2010 has been increased with 161 persons.

The National Action Plan on Combating Trafficking in Persons 2011-2013 provides for a large number of activities aimed at identifying and referring the greatest number of victims and potential victims of trafficking. During 2011, there have been identified, referred, offered protection and assisted 84 victims/potential victims of trafficking, out of whom 39 are children. All the identified victims have been referred in shelters and have received full services provided by shelters. The new national anti-drug strategy is being drafted in consultation with all stakeholders. In 2011 there has been an increase in number of the cases of the narcotic substances seizures by 22.5 %; the number of the offenders in the drug area is increased by 18.5 %; the number of the arrested and detained citizens is increased by 15.7 % and the number of the offenders who fled is decreased by 39.2 % as compared to 2010.

### **Overview of readmission agreements in contemporary Europe**

Readmission agreements emerged in the practice of States the first decade following the World War II, mainly in Eastern European countries. Initially they provided the regulation of border control and treatment of persons who illegally entered the territory of state parties to the agreement.

The readmission agreements provide a structure of the accountability of states for their citizens who enter or remain unlawfully in the territory of another contracting party. Starting in late 1980, as a result of political changes in Europe, at the beginning of the democratic process and fight against the communist regime, was envisaged that a movement of about 30 million people would move westwards and therefore it would be very difficult to control this movement.

Only in 1989 from Eastern to Western Europe immigrated 1.300.000 people. After that time the countries of Central and Eastern Europe were gradually transformed from a source of immigrants, in hosting countries and transit of migrants.

Readmission agreements require states parties to readmit certain categories of persons in their territory at the request of another contracting party. Pursuant to these agreements, persons who are citizens of a state party and, in certain circumstances, third country nationals or stateless persons who have passed through the territory of the requested party or have a residence permit on the territory of that party should be readmitted.

### **Readmission agreements and international obligations of States**

Based on the practice of international law, each state is obliged to readmit its own nationals, even in the absence of a readmission agreement. The need for such an agreement arises when it comes to the readmission of foreign nationals or third country nationals, to a third country, who use the territory of a State to transit and enter into the territory of another state that requires their readmission.

For the conclusion of readmission agreements is required dialogue between States, including confirmation of the principle of good relations on the basis of reciprocity, in order to prevent illegal trafficking of persons and clandestine movements. The agreements are intended to prevent movement in transit to persons who are not in possession of valid documents needed to travel to enter in the neighboring country or country of destination.

Some states stresses that the aim to conclude the agreement is not the repetition of this obligation, but the facilitation of its implementation. Such agreements are necessary to determine the formalities required for readmission, the type and level of evidence needed, and determining which party will bear the costs of readmission, or return.

On the other hand, the conclusion of readmission agreements may create the impression that countries have an international obligation to readmit their nationals only when it is provided in such agreement. To avoid this opinion, must be emphasized the role of the implementation of these agreements.

*Readmission of nationals of a state based on these international acts:*

1. Article 13 of the Universal Declaration of Human Rights, provides that every person has the right to return to his country. Refusal of return is inconsistent with this Article.
2. Under the terms of Article 29 of the Universal Declaration of Human Rights, the right of persons to return to their country, cannot be subject to restrictions other than those provided by law that are necessary in a democratic society to ensure recognition and respect for the rights and freedoms of others and for meeting the requirements of morality, public order and welfare for all.
3. Article 12 of the Covenant for Civil and Political Rights provides that every person has the right to leave any country, including his country.
4. Article 4 of the Covenant for Civil and Political Rights provides that no one can be deprived of the right to enter his country. An analogous provision is provided to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Furthermore it is stated: "No one shall be denied the right to enter the territory of the state whose citizen he is."

From the legal standpoint, the right to return at the country of origin corresponds with the obligation to readmit persons who have been refused an extension of their residence from another state, who lawfully exercises its territorial sovereignty. The respect for human rights in case of return to country of origin will depend on the willingness of the person to return. This is based on an individual human right.

On the other hand, there is an obligation of the State of origin to readmit the person, or group of persons, because they did not respect legislation in force, specifically those related to enter, transit and stay in the territory of another state. The basis of compelling a state to accept its nationals remains a decision that is personal according territorial sovereignty of that state. International principles require each state to oversee at least its citizens. If these citizens are in other countries, they benefit from diplomatic protection of the state of origin, which is authorized if necessary to exercise that protection in the State of residence of citizens. Based on the principle of reciprocity, the state of residence has the right to exercise its power to send back in their country of origin the foreigners who stay illegally in its territory.

Albania concluded the "Agreement between the Republic of Albania and the European Community on the readmission of persons", on April 14, 2005. The Agreement entered into force on May 1, 2006. Meanwhile 12 implementation protocols are signed with EU countries and others are in process.

The Agreement<sup>6</sup> provides mutual obligations of Albania and the European Union to readmit without formalities other than those specified in the Agreement at the request of either Party, of all persons who do not meet further requirements for entry, or residence in the territory of the requesting party, provided that it is proved or admitted in a valid manner based on the evidence indicated that they are citizens of the other Party. List of evidence that can be used under the Agreement formats and applications for readmission and transit are provided in the annexes of the Agreement.

## Conclusions

As referred to the issue on free movement of persons and implementation of readmission agreements, one of the challenges for state authorities remains the drafting of the appropriate legislation and its effective implementation in practice, as well as the awareness of the citizens to give their contribution in presenting a positive image of Albania in the international arena.

Until now Albania has made a very good progress in terms of membership in international acts and agreements that address issues of fundamental freedoms and human rights, including free movement of individuals.

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<sup>6</sup> Article 2 and 4 of the Agreement between the Republic of Albania and the European Community on the readmission of persons

In this context, it is required not only to achieve the preset standards i.e. equipping citizens with identity cards, effective control of borders and border movements, deceleration of the clandestine movement and in particular the prohibition of trafficking in human beings, but above all to progress the economic development and the living standards.

A very important element is also the cooperation with neighboring countries and the countries of the region. Commendable achievements exist in almost all areas of cooperation not only in political but also in the social and economic terms which have been finalized in a series of bilateral and multilateral agreements.

In terms of readmission agreements, Albania has respected all international obligations in this regard and has responded positively to any request for readmission of its citizens, even to countries with which there has been not concluded a readmission agreement. A problem that requires a quick solution remains however the treatment of nationals of third countries with which the readmission agreements are not yet completed.

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