

**IOM SUBMISSION TO THE HUMAN RIGHTS COMMITTEE**

**UNDER THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS**

* **ALBANIA-**

1. **Introduction**

Albania ratified the International Covenant on Civil and Political Rights (ICCPR) in 1991[[1]](#footnote-1), while the Covenant entered in force on 4 January 1992. In line with the provisions of the Covenant, Albania has submitted its first report to the Human Rights Committee in 2004, and the second one in 25 August 2011. The second report covers progress made in the period 2004-2010 and in particular on the achievements in implementing the first 27 Articles to the Covenant.

The present document represents a review of the information provided in the second report of Albania (published on November 17th 2011), and update of the state of play in the period August 2011- May 2013. The update was necessary as several legislative changes with a direct impact on the implementation of the Covenant have taken place during this period. The inputs and recommendations in this report are limited to issues related to migration management in Albania only, in compliance with the mandate of the International Organization for Migration (IOM). The report and recommendations section builds on field evidence of IOM in Albania, as well as on specific findings and recommendations of the visit of the United Nations Special Rapporteur on the human rights of migrants in December 2011, facilitated by IOM and the UN Country team.

1. **SELECTED ISSUES CONCERNING IMPLEMENTATION OF THE CONVENANT**

***Asylum and immigration***

In this area, Albania has advanced legal provisions that guarantee human treatment of asylum seekers, refugees and foreign citizens in the Republic of Albania (RA). The Law no. 8432, dated 14.12.1998 “For Asylum in the RA”,[[2]](#footnote-2) the main legal act acknowledging the right for asylum or interim protection for foreigners who are in need of international protection, refugees or other persons, was amended through Law 10060, dated 26.01.2009. The amendments include improvements of provisions for rights of asylum seekers, complaint mechanisms, confidentiality, etc. However, in his visit report[[3]](#footnote-3) to Albania in 2012, the UN Special Rapporteur on the human rights of migrants expressed his concern that persons in need of international protection may not be adequately informed of, or made aware of their right to seek asylum as guaranteed in article 1 of the Law on Asylum. Many undocumented foreigners are in Albania solely in transit en route to reach the EU, with no interest of staying in Albania, including through asylum. Consequently, the Special Rapporteur was concerned that many protection claims may go unrecorded. He recommended to the Albanian authorities to take prompt steps to ensure that the right to seek and enjoy asylum is fully respected. This recommendation remains valid today.

The integration and family reunification of foreigners granted asylum is regulated by Law No. 9098, dated 03/07/2003 “On the integration and family reunion of foreigners granted asylum in the republic of Albania”, however, it is difficult to assess integration efforts made and their success.In the same report, the Special Rapporteur also recommended completing the electronic registration of all asylum seekers and refugees in the civil status registry for foreigners and providing them with the relevant identification and travel documents. Necessary measures to ensure their integration into society, notably through implementation of their rights to housing, work and social services were recommended as well. In practice, the electronic registration of asylum seekers and refugees has been completed. However, identification and travel documents have not yet been issued to them.[[4]](#footnote-4)

TheLaw no. 9959 dated 17.7.2008 “On the Foreigners”[[5]](#footnote-5), regulating entry, stay and leave of foreigners from the territory of RA was considerably amended and approved by Law 108/2013. The new law is compatible with several directives of the European Union with regard to admission of third country nationals for employment purposes, family reunification procedures, residence for victims of trafficking, etc. The foreigners who are subject to this law should be treated in compliance with the human rights, fundamental freedoms and the international agreements ratified by the RA, while respecting the principle of reciprocity, non-discrimination and treatment not less favorable than for the Albanian citizens. All these provisions provide for significant legislative improvements on the treatment of foreigners in RA regardless of their status (regular or irregular). The next step is to develop a comprehensive secondary legislation that will enable implementation of the law in practice through an active involvement of the Ministry of Interior, Ministry of Foreign Affairs and the Ministry of Labour, Social Affairs and Equal Opportunities.

***Trafficking in Human Beings and child exploitation (Articles 6, 7 and 24)***

It should be highlighted that steady progress has been reported in the area of counter trafficking in Albania. In 2011, Albania developed a new National Action Plan on the Fight against Trafficking in Human Beings and the National Action Plan on the Fight against Trafficking in Children and Protection of Children, Victims of Trafficking 2011-2013. The action plan includes a fourth area of intervention, *Coordination*, beside the three previous areas highlighted in the second report of Albania, namely, *Investigation and Prosecution*, *Support and Protection for VOTs* and *Prevention of Trafficking and re-Trafficking*. At present, Albania is developing a cross sectional Strategy on the Fight against Organized Crime, Trafficking and Terrorism for the period 2013-2020 which includes provisions on trafficking in human beings and trafficking in children. The new policy provisions will complement the vision and specific provisions of the National Referral Mechanism for Identification, Referral and Assistance of VOTs (NRM). The latter, initially developed in 2005, was renewed in July 2012 [[6]](#footnote-6) to enable participation of more actors from the central government and civil society active in the assistance to VOTs. The NRM agreement and its Standard Operating Procedures (SOPs)[[7]](#footnote-7) regulate the roles and responsibilities of all actors involved in the identification, referral, protection, and assistance to victims/potential victims of trafficking in Albania.

While the NRM has been effective in ensuring support to VOTs and potential VOTs, in the case of unaccompanied minors (Albanian citizens) the NRM has not been effective. The continuous presence of this category in the neighboring countries, Greece and Italy shows for a steady migration trend which requires a careful analysis of the push and pull factors. The Albanian border authorities reported 396 UAMs who returned to Albania in the course of 2012, of which 283 UAMs returned from the border points with Greece (261 males and 22 females) and the majority is believed to be Roma UAMs.[[8]](#footnote-8) According to the SOPS, while conducting identification of VOTs, the responsible authorities (at the border or abroad) may also come across cases of unaccompanied minors who may be VOTs or potential VOTs, or who may be just “unaccompanied”. Once the National Responsible Authority[[9]](#footnote-9) is informed, it then makes an “ad hoc” decision on how to follow up the case (as there is no specific procedure for follow up assistance) [[10]](#footnote-10). In practice, upon return to Albania, after initial contacts with the border police, in the majority of cases the minors are left alone in the territory without any further follow up support.

In general, it is observed that all national and local structures that can and should in principle deal with the phenomenon of emigration of unaccompanied minors from Albania, are not developing or implementing preventive and protective policies and practices for UAMs from Albania toward European Union member states, despite efforts by IOM and civil society. In particular the State Social Service, under the Ministry of Labour, Social Affairs and Equal Opportunities, the leading government entity delivering social protection services in the country, is expected to play a major role in terms of preventive actions as well as protection ones that include long term reintegration support for the minors.

The UN Special Rapporteur on the human rights of migrants was deeply concerned about the situation of unaccompanied Albanian children returned to the borders by the authorities of neighbouring countries outside the framework of readmission agreements. He recommended to take urgent measures to ensure that the return of Albanian unaccompanied children from neighboring countries only takes place pursuant to an analysis of the best interests of the child and is properly followed-up on an individual basis by national authorities.

In terms of legislation in the area of trafficking in human beings and exploitation for labour purpose, it is important to highlight the following developments:

* The Law “For protection of the witnesses and justice collaborators” (2004) was amended by law 10173, dated 22.10.2009. The law (under article 28) provides specific provisions on the protection of VOTs who are witnesses and justice collaborators. The provisions are further specified in an Instruction of the Minister of Interior. In addition, a specific Law on Prevention and the Fight against Organized Crime and Trafficking through Preventive Measures against Assets” No.10192 was approved on 03.12.2009. This law sanctions the establishment of the Agency for Administration of assets confiscated and sequestered by organized crime (including trafficking in human beings), at the Ministry of Finance. The law represents a novelty in the fight against trafficking as it foresees the establishment of a Special Fund for compensation of victims of trafficking. Yet, only one victim has won a court case to receive financial compensation so far, and since the Fund has not been established, she has not been compensated.
* The Penal Code of Albania was amended by Law 144/2013. The new provisions recognize “internal trafficking” in human beings. In addition, the benefits or use of the services provided by trafficked persons, or exploitation from trafficking are now punishable by the law. The law recognizes that all forms of exploitation of children including labour and begging are a criminal offense punishable by the law. In particular, Article 124/b ‘*Maltreatment of the minor*[[11]](#footnote-11), punishes all situations in which the minor is forced to work to secure money for the family or to beg, with imprisonment from two to five years (initially up to four years), and in case of serious harm of minor health or death, with imprisonment from ten to twenty years. Article 128/b ‘*Trafficking of minors*”[[12]](#footnote-12) envisions a punishment with imprisonment from ten to twenty years (initially from seven to fifteen years and with a fine) in the case of trafficking of the minor. In addition, “Artcile 114” envisions a punishment for exploitation of prostituion, with imprisonment from two to five years, and in cases when such action is taken against minors, with imprisonment from seven to fifteen years.

Beside legislative developments in the area of child exploitation as well as child protection, it should be stressed that the Penal Code continues not to recognize forced child labour exploitation as a form of trafficking, despite the fact that Albania has ratified the Palermo Protocol, which clearly defines this form of exploitation as trafficking in human beings. In addition, the national authorities in Albania have frequently expressed the concern of legal dispositions in the area of trafficking in human beings as being dispersed in various legal acts. It has therefore been recommended that Albania develops a draft law on trafficking in human beings as to further reinforce adequate prevention, prosecution and protection for victims of trafficking.

***Right to freedom of movement and choice of residence (Article 12)***

The new provisions are more compatible with the provisions of Article 12 of the Covenant, in particular for long term residents. The law establishes that long term residents shall enjoy economic rights, health-related and social rights on the same terms as the Albanian nationals, in line with the legislation in force.

***Expulsion of foreigners (Article 13)***

The Constitution of the Republic of Albania prohibits collective expulsion of foreigners. Removal and expulsion of a foreign individual are only allowed according to stipulations determined in the new Law on Foreigners 108/2013 (Chapter IV).

The new law provides for improved appeal mechanisms against removal orders[[13]](#footnote-13), expulsion[[14]](#footnote-14) of foreigners, and promotes voluntary enforcement of the removal order for irregular foreigners[[15]](#footnote-15). According to the law, the detention regime of irregular foreigners in closed reception facilities should guarantee for a humane and decent treatment of foreigners[[16]](#footnote-16) and respect of fundamental rights of individuals. Furthermore, appeal mechanisms against detention decisions in closed facilities are foreseen.[[17]](#footnote-17) However, in light of the grave concerns raised by the UN Special Rapporteur on issues related to accessibility, detention conditions, legal safeguards in law and practice, and the treatment of migrants detained in the national reception facility for third country nationals in Kareç (Durres), it is recommended to independently and continuously monitor the situation in the center, in particular from a human rights perspective.

Among the novelties of the law are the provision of alternative measures to detention for unaccompanied minors (UAMs), victims of trafficking (VOT) and categories in need, following the recommendations of the UN Special Rapporteur in this respect.

The Special Rapporteur also recommended undertaking a study on the situation and enjoyment of rights of migrant workers and members of their families in an irregular situation living in Albania. While the legal review is ongoing (such as through the amendment of the Law on Foreigners) it is important to continue this review and to undertake the study on irregular migrants and members of their families.

1. **RECOMMENDATIONS FOR CONSIDERATION BY THE COMMITTEE**

IOM respectfully recommends the Human Rights Committee to urge Albania to:

* Enhance actions to further improve legislation in the area of counter trafficking including recognition of forced child labour exploitation as a form of trafficking in human beings;
* Further enforce legislation in place concerning trafficking in human beings, in particular re-compensation of victims of trafficking, including establishment of a Special Fund for compensation of victims of trafficking;
* Take a proactive role in developing standards of identification and protection for UAMs in cooperation with the other international and national stakeholders;
* Develop and implement a secondary legislative basis of the new Law on Foreigners as to guarantee full exercise of the rights of foreigners entering, residing and leaving Albania;
* Undertake a study on the situation and enjoyment of rights of migrant workers and members of their families in an irregular situation living in Albania;
* Continue legal reviews as to best guarantee the fundamental civil, political, economic, social and cultural rights of foreigners in Albania;
* Support independent and continuous monitoring of the human rights situation in the national close detention center of Albania;
* Continue with electronic registration of all asylum seekers and refugees in the civil status registry for foreigners and provide them with the relevant identification and travel documents;
* Undertake necessary measures to ensure integration of asylum seekers and refugees into society, notably through implementation of their rights to housing, work and social services.

1. Ratified by Law No 7510, date 08.08.1991 [↑](#footnote-ref-1)
2. Reference in para 139 of the report [↑](#footnote-ref-2)
3. The visit took place in December 2011 and report was issued on 10 April 2012 (A/HRC/20/24/Add.1) [↑](#footnote-ref-3)
4. Such concern was raised by the UNHCR representative during the National Workshop on New Migration Management Policy Provisions, organized by IOM Tirana on 30 April 2013 [↑](#footnote-ref-4)
5. Reference in para 140 of the report [↑](#footnote-ref-5)
6. Revised and re-signed on 15.06.2012 [↑](#footnote-ref-6)
7. Adopted by Council of Ministers Decision No. 582, date 27.07.2011 [↑](#footnote-ref-7)
8. Information provided by Border and Migration Department, State Police in February 2013 [↑](#footnote-ref-8)
9. The National Responsible Authority is composed of 2 representatives from each of the following ministries: the Ministry of Labour, Social Affairs and Equal Opportunities, the Ministry of Interior and the Ministry of Foreign Affairs [↑](#footnote-ref-9)
10. [↑](#footnote-ref-10)
11. Article 2, added by Law no.9859, date 21.1.2008, and changed by law No. 23/2012 [↑](#footnote-ref-11)
12. Changed by Law No 9188, date 12.2.2004, Article 3;added by Law 9859, date 21.1.2008, Artcile 3 [↑](#footnote-ref-12)
13. Law 108/2013, Article 107 [↑](#footnote-ref-13)
14. Law 108/2013, Article 110 [↑](#footnote-ref-14)
15. Law 108/2013, Article 108 [↑](#footnote-ref-15)
16. Law 108/2013, Articles 120, 127, 128 [↑](#footnote-ref-16)
17. Law 108/2013, Articles 122, 123, 124 [↑](#footnote-ref-17)