

**JOINT INTERNATIONAL
CONFERENCES**

10TH EDITION
EUROPEAN INTEGRATION
REALITIES AND PERSPECTIVES

5TH EDITION
THE GLOBAL ADVANCEMENT
OF UNIVERSITIES AND COLLEGES

Law for Asylum in Albania and Some EU Regulations on Asylum Issues

Katrin Treska¹, Engjëll Likmeta²

Abstract: This paper aims at treating from a general point of view the Albanian legislation on asylum, and to see the level of approximation with EU legislation in this field, as the asylum has become a controversial topic because of increasing demands for asylum from citizens of nonmembers states of the European Union. Because of a relatively new law in Albania, discussions on this topic are scarce. The method used for this paper is analyzing the current legal provisions on the issue of asylum in the Republic of Albania, the main regulations of asylum issue in the European Union, in order to see the level of approximation and compliance of legal rules in Albania with international standards on asylum. As a relatively new law, the law on asylum has a partial approximation with EU directives and is in line with the standards enshrined in the Geneva Convention, to which the Republic of Albania has acceded. Of course, this paper does not treat this issue in an exhaustive way, but provides only a general overview of the level of approximation of Albanian legislation with European Union regulations on asylum.

Keywords: Asylum; EU Directives; Legal provisions; Geneva Convention

1. Origin of Asylum

The origin of asylum comes from the ancient antiquity. Long before the Western democracies defined who is a refugee and established international organizations to assist people fleeing persecution, various religions as well as ancient rulers offered asylum in accordance with their set of norms and beliefs³. (Ezra, 2014, p. 57)

Perhaps the earliest mention of the term “refugee” occurs in the Old Testament, in the first book of Moses, referring to a person who escaped from a war and sought shelter from Abraham. (Ezra, 2014, p. 57)

With time, the concept was further developed to include those who killed another by mistake. Thus, for example, in the fourth book of Moses, God commanded Joshua to build three cities of refuge to allow people guilty of unintentional manslaughter to flee from the blood avenger. (Ezra, 2014, p. 57)

Another way to acquire asylum was to reside in the temple at Jerusalem, as it was forbidden to remove by force any person under the protection of the deity. Unlike the word “refugee”, which meant that the

¹ PhD Candidate, Law Drafting and Analysis Department, General Directorate of Codification, Ministry of Justice, Albania, Address: Blv. “Zog I”, 256 Tirana, Albania, Tel.: +355 4 2230247, Corresponding author: trkatrin@hotmail.com.

² PhD, Lecturer, Criminal Law Department, Faculty of Justice, University of Tirana, Albania, Address: Square “Mother Teresa”, PO Box No. 183, Tirana, Albania, E-mail: likmetaengjell@hotmail.com.

³ http://edoc.ub.uni-muenchen.de/2680/1/Ezra_Esther.pdf, Accessed date 14.02.2014.

person concerned ought to be protected, exile had a negative meaning, suggesting a divine intervention for dealing with inappropriate behavior.

From a religious standpoint, it was God's way of punishing the Israelites who "betrayed" his way by following other customs. (Ezra, 2014, p. 57)

In Albania, although asylum was not a term known directly by the norms of Albanian customary law, it was known by the Albanian society of that period of time. Such a phenomenon was mainly known due to penalties given to the perpetrators of various damages in case of commission of certain offenses such as theft, murder, crimes against property etc. Expulsion of a person from its territory of residence, was known as a primitive form of committing criminal acts. Studying it in light of current knowledge from resources, the term asylum in ancient Rome was not defined by legislation and was not described by roman jurisprudence¹. (Mossakowski, 2004-6, p. 1)

The Latin term *asylum* is believed to come from the Greek word *ἀσυλοία* *oráσvλov* which means a safe place. After a process of the evaluation of this term, it meant a sacred place, place of shelter. In ancient Rome the term asylum had a specific legal meaning. (Mossakowski, 2004-6, p. 1)

Historically, refugees were recognised on the basis that they formed part of groups deprived of protection from their own state. Until the 20th century this was a matter of individual action on the part of nation states. Two well-known historical examples are French Huguenots finding shelter in England and English Catholics finding shelter in France from religiously-based persecution in their respective States during the 16th and 17th centuries. (Mackey & Barnes, 2013, par. 38)

In the second half of the 19th century, with the emergence of national movements in Italy, Ireland, Poland and Germany, the definition of asylum shifted from the religious sphere to the political one. The expression most commonly used was 'exile'. Among the *Romantic Exiles*, as E. H. Carr rightly observed¹⁴³, one may find distinguished historical figures, such as Karl Marx, Giuseppe Mazzini, Michael Bakunin and Alexander Herzen. Switzerland, France, and Britain expressed great sympathy and support towards these political activists and served as the main host countries. (Ezra, 2014, p. 57)

The Universal Declaration of Human Rights, of December 10, 1948, Article 14, states: "Everyone has the right to seek and to enjoy in other countries asylum from persecution. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations"².

Among the main goals, dealing with policies on asylum and that serve for strengthening the capabilities of the Albanian state to ensure implementation of the obligations and commitments towards the European Union relating to the functioning of all components of the asylum system is the correct application of international legal principle recognized by customary international law of non-refoulement and other rights of asylum seekers and refugees by law enforcement agencies, as well as treating equally third-country nationals legally residing in the territory of Albania³.

¹ Furthermore: <http://pomoerium.eu/pomoer/pomoer5/mossakowski2.pdf>, Accessed date 14.02.2014.

² Explanatory Report of draftlaw "On asylum in the Republic of Albania", pg.1. Furthermore: http://www.parlament.al/web/PROJEKTLIGJI_P_R_AZILIN_N_REPUBLIK_N_E_SHQIP_RIS_17270_1.php [Accessed date: 13.02.2015]

³ Explanatory Report of draftlaw "On asylum in the Republic of Albania", pg.6. Furthermore: http://www.parlament.al/web/PROJEKTLIGJI_P_R_AZILIN_N_REPUBLIK_N_E_SHQIP_RIS_17270_1.php [Accessed date: 13.02.2015]

2. EU Directives on Asylum

2.1 The Common European System of Asylum

Asylum is granted to people fleeing persecution or serious harm in their own country and therefore in need of international protection. Asylum is a fundamental right; granting it is an international obligation. This obligation was first recognized in the 1951 Geneva Convention on the protection of refugees. In the EU, an area of open borders and freedom of movement, countries share the same fundamental values and States need to have a joint approach to guarantee high standards of protection for refugees. Procedures must at the same time be fair and effective throughout the EU and impervious to abuse. With this in mind, the EU States have committed to establishing a Common European Asylum System¹.

Asylum flows are not constant, nor are they evenly distributed across the EU. They have, for example, varied from a peak of 425 000 applications for EU-27 States in 2001 down to under 200 000 in 2006. In 2012, there were 335,895².

According to the Common European Asylum System, asylum must not be a lottery. EU Member States have a shared responsibility to welcome asylum seekers in a dignified manner, ensuring they are treated fairly and that their case is examined to uniform standards so that, no matter where an applicant applies, the outcome will be similar³.

Between 1999 and 2005, several legislative measures harmonizing common minimum standards for asylum were adopted. In 2001, the Temporary Protection Directive allowed for a common EU response to a mass influx of displaced persons unable to return to their country of origin. The Family Reunification Directive also applied to refugees⁴.

After the completion of the first phase, a period of reflection was necessary to determine the direction in which the CEAS should develop. A 2007 Green Paper was the basis for a large public consultation. The responses, together with the results of an evaluation of how existing instruments were implemented, were the basis for the European Commission's Policy Plan on Asylum, presented in June 2008. As stated in the Policy Plan, three pillars underpin the development of the CEAS: bringing more harmonization to standards of protection by further aligning the EU States' asylum legislation; effective and well-supported practical cooperation; increased solidarity and sense of responsibility among EU States, and between the EU and non-EU countries⁵.

New EU rules have now been agreed, setting out common high standards and stronger co-operation to ensure that asylum seekers are treated equally in an open and fair system – wherever they apply⁶.

2.2 Directive 2011/95/EU

Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011, is a Directive on standards for the qualifications of citizens of countries nonmember states of the EU, or stateless persons as beneficiaries of international protection, for a uniform status for refugees or persons eligible for subsidiary protection.

¹ http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/index_en.htm

² http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/index_en.htm

³ http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/index_en.htm

⁴ http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/index_en.htm

⁵ http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/index_en.htm

⁶ http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/index_en.htm

The Qualification Directive establishes common grounds to grant international protection. Its provisions also foresee a series of rights on protection from *refoulement*, residence permits, travel documents, access to employment, access to education, social welfare, healthcare, access to accommodation, access to integration facilities, as well as specific provisions for children and vulnerable persons. The minimum standards in the previous Directive were to a certain extent vague, which maintained divergences in national asylum legislation and practices. The chances of a person to be granted international protection could vary tremendously depending on the Member State processing the asylum application¹.

The new Qualification Directive will contribute to improve the quality of the decision-making and ensure that people fleeing persecution, wars and torture are treated fairly, in a uniform manner. It clarifies the grounds for granting international protection and leads to more robust determinations, thus improving the efficiency of the asylum process and prevention of fraud, and ensures coherence with the European court's judgments².

The assessment of an application for international protection is to be carried out on an individual basis and includes taking into account³: all relevant facts as they relate to the country of origin at the time of taking a decision on the application, including laws and regulations of the country of origin and the manner in which they are applied;

- the relevant statements and documentation presented by the applicant including information on whether the applicant has been or may be subject to persecution or serious harm;
- the individual position and personal circumstances of the applicant, including factors such as background, gender and age, so as to assess whether, on the basis of the applicant's personal circumstances, the acts to which the applicant has been or could be exposed would amount to persecution or serious harm;
- whether the applicant's activities since leaving the country of origin were engaged in for the sole or main purpose of creating the necessary conditions for applying for international protection, so as to assess whether those activities would expose the applicant to persecution or serious harm if returned to that country;
- whether the applicant could reasonably be expected to avail himself or herself of the protection of another country where he or she could assert citizenship.

The Directive provides in Article 5 that a well-founded fear of being persecuted or a real risk of suffering serious harm may be based on events which have taken place since the applicant left the country of origin.

A well-founded fear of being persecuted or a real risk of suffering serious harm may be based on activities which the applicant has engaged in since he or she left the country of origin, in particular where it is established that the activities relied upon constitute the expression and continuation of convictions or orientations held in the country of origin.

Without prejudice to the Geneva Convention, Member States may determine that an applicant who files a subsequent application shall not normally be granted refugee status if the risk of persecution is

¹ http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/refugee-status/index_en.htm

² http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/refugee-status/index_en.htm

³ Directive 2011/95/EU of the European Parliament and the Council of 13 December 2011, Article 4. <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32011L0095> [Accessed date: 7.02.2015]

based on circumstances which the applicant has created by his or her own decision since leaving the country of origin¹.

In order to be regarded as an act of persecution within the meaning of Article 1(A) of the Geneva Convention, an act must²:

- ◆ be sufficiently serious by its nature or repetition as to constitute a severe violation of basic human rights, in particular the rights from which derogation cannot be made under Article 15(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms; or
- ◆ be an accumulation of various measures, including violations of human rights which is sufficiently severe as to affect an individual in a similar manner as mentioned in point (a).

Acts of persecution as qualified in paragraph 1 can, inter alia, take the form of³:

- ◆ acts of physical or mental violence, including acts of sexual violence;
- ◆ legal, administrative, police, and/or judicial measures which are in themselves discriminatory or which are implemented in a discriminatory manner;
- ◆ prosecution or punishment which is disproportionate or discriminatory;
- ◆ denial of judicial redress resulting in a disproportionate or discriminatory punishment;
- ◆ prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include crimes or acts falling within the scope of the grounds for exclusion as set out in Article 12(2);
- ◆ acts of a gender-specific or child-specific nature

It is very important to mention Article 10 of the Directive, which sanctions the reasons for persecution taken into account while considering a request for granting asylum.

The Directive sanctions that Member States shall take the following elements into account when assessing the reasons for persecution⁴:

- ❖ the concept of race shall, in particular, include considerations of colour, descent, or membership of a particular ethnic group;
- ❖ the concept of religion shall in particular include the holding of theistic, non-theistic and atheistic beliefs, the participation in, or abstention from, formal worship in private or in public, either alone or in community with others, other religious acts or expressions of view, or forms of personal or communal conduct based on or mandated by any religious belief;
- ❖ the concept of nationality shall not be confined to citizenship or lack thereof but shall, in particular, include membership of a group determined by its cultural, ethnic, or linguistic identity, common geographical or political origins or its relationship with the population of another State;
- ❖ a group shall be considered to form a particular social group where in particular:

¹Directive 2011/95/EU of the European Parliament and the Council of 13 December 2011, Article 5.<http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32011L0095> [Accessed date: 7.02.2015]

²Directive 2011/95/EU of the European Parliament and the Council of 13 December 2011, Article 9/1.<http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32011L0095> [Accessed date: 7.02.2015]

³Directive 2011/95/EU of the European Parliament and the Council of 13 December 2011, Article 9/2.<http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32011L0095> [Accessed date: 7.02.2015]

⁴Directive 2011/95/EU of the European Parliament and the Council of 13 December 2011, Article 10.<http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32011L0095> [Accessed date: 7.02.2015].

- members of that group share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it, and
- that group has a distinct identity in the relevant country, because it is perceived as being different by the surrounding society.

Depending on the circumstances in the country of origin, a particular social group might include a group based on a common characteristic of sexual orientation. Sexual orientation cannot be understood to include acts considered to be criminal in accordance with national law of the Member States. Gender related aspects, including gender identity, shall be given due consideration for the purposes of determining membership of a particular social group or identifying a characteristic of such a group;

❖ the concept of political opinion shall, in particular, include the holding of an opinion, thought or belief on a matter related to the potential actors of persecution mentioned in Article 6 and to their policies or methods, whether or not that opinion, thought or belief has been acted upon by the applicant.

This Directive brought a significant improvement in the harmonization of EU law with the standards of international human rights and legal obligations of refugees and the case law of the European Court of Human Rights. However, depending on its interpretation and application of the Directive may allow for gaps in the protection of applicants and beneficiaries of international protection. Therefore, the obligation arises for member states to use their power to adopt more favorable standard under Article 3 of the Directive, in line with the continuous evolution of international and European jurisprudence and law on asylum.

As we see above, the Directive is very detailed in its predictions, avoiding subjective interpretations of its provisions, a basic principle for the quality of legislation and enabling uniformity of treatment of asylum issues in all European Union member states.

3. Albanian Law on Asylum

Article 40 of the Albanian Constitutions sanctions that foreigners have the right of asylum in the Republic of Albania according to the law. This is the general principle sanctioned in the Constitution, referring to the specific regulations made by law.

Beside this principle sanctioned in Albanian Constitutions for the right of foreigners to asylum in the Republic of Albania, as sanctioned by law, the Republic of Albania adhered to the Convention "On the Status of Refugees", signed in Geneva on 28.07.1951, and the protocol "On the Status of Refugees", signed in New York on 31.1.1967¹.

Albania has also ratified the agreement between the Government of the Republic of Albania and the High Commissioner for Refugees of the United Nations, through the law No.7833, dated 22.06.1994².

Albania has ratified the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness, accepting some international and regional instruments on human rights, which are also important to the protection the refugees. Through these acts, Albania

¹Decree of the President of the Republic No.200, dated 06.03.1992 "On the accession of the Republic of Albania in the" Convention on the Status of Refugees and the "Protocol on the Status of Refugees".

² Law, No.7833, date of act: 22.06.1994, Date of approval: 06.07.1994, Official Journal No.8, Page:391 www.ligjet.org

is listed next to those countries, promoting and spreading the values of humanity and becoming part of international conventions, such as the Geneva Convention of 1951 and the New York Protocol on asylum creating an effective system of asylum¹.

Article 80, of the Stabilization and Association Agreement states that Albania and the European Union will cooperate in the field of visas, border control, asylum and migration and will establish a framework for cooperation, including at regional level, in those fields, taking into account and making full use of other existing initiatives in this area as appropriate. Cooperation in the above matters will be based on mutual consultations and close coordination between the parties and shall include technical and administrative assistance for:

- Exchange of information on legislation and practices;
- Drafting legislation;
- Increasing the efficiency of the institutions;
- Training of staff;
- The security of travel documents and detection of false documents;
- Border management.

Cooperation focuses in particular:

✓ in the field of asylum on the implementation of domestic legislation to meet the standards of the Geneva Convention of 1951 and the New York Protocol of 1967 to provide in this way respecting the principle of non-return of the individual in that country that poses threat to his life, as well as other rights of asylum seekers and refugees;

✓ in the field of legal migration, on admission rules and rights and status of persons admitted. Regarding migration, the Parties agree to fair treatment of nationals of other countries who are legally resident in their territories and to promote integration policies aimed at making the rights and obligations comparable to those of own citizens².

Whereas Article 81 of the Stabilization and Association Agreement provides that the parties cooperate to prevent and control illegal immigration. For this purpose, the parties, upon request and without further formalities, agree that Albania and Member States:

- will readmit any of their nationals residing illegally in their territories;
- will readmit any third-country nationals and stateless persons residing illegally in their territory and entered the territory of Albania through a Member State or from a Member State, or has entered the territory of a Member State via Albania, or from Albania.

Member States of the European Union and Albania have an obligation under the SAA to provide their nationals with appropriate identity documents and shall extend to them the administrative facilities for this purpose. Specific procedures for the purpose of readmission of nationals, third country nationals and stateless persons are defined in the Agreement between the European Community and Albania on the readmission of persons residing without authorization, signed on 14 April 2005. Albania has agreed to end readmission agreements with countries of the Stabilisation and Association process and undertakes to take all necessary measures to ensure the flexible and rapid implementation of all

¹Explanatory Report of draftlaw “On asylum in the Republic of Albania”, pg.2. Furthermore: http://www.parlament.al/web/PROJEKTLIGJI_P_R_AZILIN_N_REPUBLIK_N_E_SHQIP_RIS_17270_1.php [Accessed date: 13.02.2015]

²Law No. 9590, date 27.07.2006 “On the ratification of the Stabilization and Association Agreement between the Republic of Albania and the European Communities and their Member States”, Article 80.

readmission agreements referred to in Article 82 of the SAA. Meanwhile, the agreement also stipulates that the Stabilisation and Association Council will undertake other joint efforts that can be made to prevent and control illegal immigration, including networks of trafficking and illegal migration¹.

3.1 Law no. 121/2014 “On Asylum in the Republic of Albania”, as Amended

Law no. 121 / 2014 "On Asylum in the Republic of Albania", as amended², was approved on 18/09/2014 and promulgated by Decree no. 8736, dated 08.10.2014 of the President of the Republic of Albania.

This new law repealed law no. 8432, dated 14.12.1998, "On Asylum in the Republic of Albania", as amended, and the law no. 9098, dated 07.03.2003, "On the integration and family reunion of people who have been granted asylum in the Republic of Albania". One of the innovations in this law, is exactly the integration in a harmonized way of both existing laws on asylum, the law No. 8432, dated 14.12.1998, "On Asylum in the Republic of Albania", as amended, and Law No. 9098, dated 03.07.2003, "On the integration and family reunion of people who have been granted asylum in the Republic of Albania", aiming to consolidate and regulate the field of asylum in the Republic of Albania with the latest developments and changes, especially to those dealing with the approval of the Law no.108 / 2013, dated 03.28.2013, "For foreigners". In this way, was enabled having an organic law on asylum³.

This law aims at consolidating the substantive legal framework in the field of asylum and full alignment of this legislation with the European Union⁴.

As defined in Article 2 of the same law, its object is to determine the principles and basic conditions for recognizing and guaranteeing the right of foreign persons or stateless persons to seek international protection; the responsible authorities and their competence in dealing with foreigners and stateless persons seeking international protection; ways of recording and documents, provided for persons seeking asylum and those who have received a form of international protection in the Republic of Albania; refugee status and subsidiary protection status; rights arising from international protection; the right of administrative and judicial appeals⁵.

A topic to be treated is the meaning that the Albanian legislation awarded to the term "asylum". The answer for this question is found in Article 3 of Law no. 121/2014, sanctioning asylum as form of international protection that the Republic of Albania grants to refugees. The same provision gives the meaning of the term refugee, as a foreigner or stateless person who, owing to well founded fear of being persecuted for reasons of race, religion, nationality, membership in a particular social group or political opinion, is outside the country of his nationality or country of habitual residence and is unable or unwilling to seek the protection of that country or return to that country, as a result of these circumstances, in accordance with the requirements of section 1 (A) of Geneva Convention⁶.

¹Law No. 9590, date 27.07.2006 “On the ratification of the Stabilization and Association Agreement between the Republic of Albania and the European Communities and their Member States”, Article 82.

²Law, No.121/2014, date of act 18.09.2014, date of approval 18.09.2014, Official Journal; No.158, Page:8113 www.ligjet.org.

³Explanatory Report of draftlaw “On asylum in the Republic of Albania”, pg. 1. Furthermore: http://www.parlament.al/web/PROJEKTLAWI_P_R_AZILIN_N_REPUBLIK_N_E_SHQIP_RIS_17270_1.php [Accessed date: 13.02.2015]

⁴Ibid.

⁵Law, No.121/2014, Article 2.

⁶Law, No.121/2014, Article 3/d).

Asylum seeker under Albanian law is any foreign or stateless person, who demonstrates in any way that he does not want to return to his country, and any foreigner or stateless person who has filed an application for asylum in Albania, for which is not yet taken a final decision

Article 4 of Law no. 121/2014, in full alignment with Article 40 of the Constitution of the Republic of Albania, stipulates that in the Republic of Albania is granted the right to asylum of a foreigner or stateless person who, owing to well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion, is outside the country of his nationality or habitual former residence and is unable or unwilling to seek the protection of that country, as a result of these events because of this fear.

The law also stipulates exceptional cases from the right of asylum. Asylum is not guaranteed by Albanian law, to a foreigner for whom there is information about¹:

- a) a committed crime against peace, crimes against humanity or war crimes, a committed terrorist act, as stipulated in the international conventions;
- b) the threat of public order and national security of the Republic of Albania, due to the commission of a serious non-political crime outside the territory of the Republic of Albania, before entering as asylum seeker in the Republic of Albania;
- c) guilty of acts contrary to the purposes and principles of the United Nations

Asylum is not granted to a foreigner who has equal rights and obligations as other citizens of the Republic of Albania, except cases when the rights and obligations are associated specifically with Albanian citizenship.

The right to asylum is not granted to a foreigner taken under protection or assistance from UN bodies, except when protection is guaranteed by the United Nations High Commissioner for Refugees (UNHCR). But the law also provides that if the protection or assistance has ceased for any reason, to the foreigner is granted asylum if he meets the conditions stipulated in the law².

Albanian legislation also sanctions the principle of non-refoulement, by providing that the Republic of Albania recognizes and respects the authorities' obligation not to return, extradite or remove outside its territory persons who have received or requested asylum or other forms of protection for the following cases:

- a) in a country where their life or freedom would be threatened on basis of race, religion, nationality, membership in a particular social group or political opinion;
- b) in a state where there is reason to believe that an asylum seeker may be at risk to be subjected to torture or to inhuman and degrading punishment or any other treatment provided by the European Convention for the Protection of Human Rights and Fundamental Freedoms, interpreted by the European Court or in treaties / international conventions to which Albania is a party;
- c) in a state where there is reason to believe that an asylum seeker may be subject to enforced disappearance;
- d) in their country of origin, if foreigners were given a form of protection, in accordance with the provisions of this law;

¹Law, No.121/2014, Article 5.

²Law, No.121/2014, Article 5.

e) in a third country, which may return or send the person to a country specified by the letters "a", "b" and "c", listed above¹.

It should be mentioned that "failure to return" under Article 3 of Law no.121/2014 is the prohibition to expel or return the foreign or stateless person in any manner to the frontiers of territories where his life or freedom is threatened, for reasons of race, religion, nationality, membership in a particular social group or political conviction.

The law also stipulates that the foreigner, whose application for asylum has been refused by the authority responsible for asylum and refugees, is not expelled or sent outside the Republic of Albania before exercising or giving legal opportunities for the exercise of procedural rights and guarantees stipulated by Law, except when the law provides otherwise. The law itself sanctions the right to appeal against a decision of rejection of the application, revocation or non-renewal of the permit to the National Commission on Asylum and Refugees, within 5 days from the date of written notice of the decision. The decision of the National Commission on Asylum and Refugees may be filed in the competent court for the settlement of administrative disagreements, according to the legislation in force².

There are only two exceptional cases where the asylum seeker can be refused:

- a) when there are reasonable grounds to consider him as a danger to the national security of the Republic of Albania;
- b) has been convicted by a final decision for a crime punishable by a minimum of 7 years' of imprisonment, which constitutes a danger to public order and security of the Republic of Albania³.

4. Conclusions

Regarding to its contents and regulations, the new Albanian law on asylum is a detailed and voluminous law that treats conditions and procedures for granting and withdrawing asylum, subsidiary protection and temporary protection in the Republic of Albania, the rights and obligations of asylum seekers, refugees and persons under temporary and complementary protection, content of refugee status and subsidiary protection, the right to family reunification and determining the conditions for integration of refugees and persons under subsidiary protection in the Republic of Albania⁴.

This law is partly approximated with some directives of the European Council:

- ✓ Council Directive 2001/55 / EC, dated 20 July 2001, " On minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof"⁵;
- ✓ Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers⁶;
- ✓ Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification⁷;

¹Law, No.121/2014, Article 6.

²Law, No. 121/2014, Article 65.

³Law, No.121/2014, Article 6.

⁴Law, No.121/2014, Article 1.

⁵CELEX No.32001L005, Official Journal of the European Union, seria L, No.212, 7.8.2001, page 12–23.

⁶CELEX No.32003L0009, Official Journal of the European Union, seria L, No.31, 6.2.2003, page 18–25.

⁷CELEX No.32003L0086, Official Journal of the European Union, seria L, No. 251, 3.10.2003, page 12–18

✓ Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status¹;

✓ Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted².

As a relatively new law, the Albanian law on asylum has a partial approximation with EU directives but it is fully aligned with the standards enshrined in the Geneva Convention, to which the Republic of Albania has acceded.

5. Bibliography

Decree of the President of the Republic No.200, dated 06.03.1992 “On the accession of the Republic of Albania in the “Convention on the Status of Refugees” and the “Protocol on the Status of Refugees”.

Directive 2011/95/EU of the European Parliament and the Council of 13 December 2011

Ezra, E. (2014). European integration and refugee protection: the development of asylum policy in the European Union. April. *Geschwister-Scholl-Institut für Politische Wissenschaft/Geschwister – Scholl – Institute of Political Sciences*, Ludwig-Maximilians-Universität München.

Pocora, Monica & Pocora Mihail Silviu (2013). An integrated approach to human trafficking, with a view to consolidated prevention. *Legislative policy between European, national and international regulation. New perspectives of law*. Bucharest: Universul Juridic.

Law No. 9590, date 27.07.2006 “On the ratification of the Stabilization and Association Agreement between the Republic of Albania and the European Communities and their Member States”.

Law, No.121/2014, date of act 18.09.2014, date of approval 18.09.2014, Official Journal; No.158, Page:8113 www.ligjet.org.

Law, No.7833, date of act: 22.06.1994, Date of approval: 06.07.1994, Official Journal No.8, Page:391 www.ligjet.org

Mackey, A., Barnes, J., *Assesment of Credibility in Refugee and Subsidiary Protection claims under the EU Qualification Directive*, Judicial Criteria and standards, IARLI, Haarlem, The Netherlands, 2013.

Mossakowski, W., “Concept of asylum in the ancient Rome”, *POMOERIVM* 5 (2004-6), ISSN 0945-2354.

Online Sources

Explanatory Report of draftlaw “On asylum in the Republic of Albania”, http://www.parlament.al/web/PROJEKTLIGJI_P_R_AZILIN_N_REPUBLIK_N_E_SHQIP_RIS_17270_1.php.

http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/index_en.htm

¹CELEX No.32005L0085, Official Journal of the European Union, seria L No. 326, 13.12.2005, page 13-34

²CELEX No.32011L0095, Official Journal of the European Union, seria L No. 337, 20.12.2011, page 9–26.