

AGENDA INSTITUTE

# TOWARDS A VISA FREE REGIME

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## Foreword

A popular consensus that only grows by the day exists in Albania in connection with the necessity of free movement of Albanians towards the West. The truthfulness of this statement is confirmed by the fact that Albanians, in an instinctive way, see the process of European Integration tied to the lifting of the visa regime while putting on a second place issues of an essential importance for the transformation and development of the country.

For years we wander in front of a vicious circle in which none of the governments that have leaded the country has ever focused on a programme of genuine reforms that would enable Albanians to move freely while on the other hand the European Union has failed to be concrete in making the European dream of Albanians real. This publication is an effort to identify what Albania and the EU need to do in order to make a success of visa liberalization process.

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This study is not a product only of its authors but the outcome of several contributions and suggestions by people who are knowledgeable in the area. Special thanks go to Ambassador Ferit Hoxha, Secretary General of the Ministry of Foreign Affairs, who shared with us his rich experience in his capacity as the Chief Negotiator of the Visa Facilitation Agreement, Mr. Gazmend Barbullushi, Director of the General Directorate of Consular and Legal Issues at the Ministry of Foreign Affairs for his contribution in untangling key concepts of the Visa Facilitation Agreement, Mr. Dritan Tola, Political Adviser at the European Commission Delegation in Albania for his valuable comments and explanation of the mechanics of functioning of Community institutions and the EU Member States in this process.

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## I INTRODUCTION

Each country maintains a right to determine a certain policy for the entry of citizens of other countries to its territory. The same can be said about Albania where the regime of movement of persons is governed by a series of bilateral agreements, which determine the obligations and restrictions concerning the entry of citizens to the territories of the parties. Freedom of movement of persons is reflected more than anywhere else in the visa regime. According to rankings concerning freedom of movement of persons, Albania belongs to the group of the most isolated countries of the world<sup>1</sup>. Compared to other countries of the continent Albania is the last in such ranking.

In other words, Albanians do not enjoy one freedom of movement that served as a cornerstone for building the European Community and later on the European Union. The slogan “We want Albania as the rest of Europe” the one used by the student movement to overthrow the totalitarian regime in 1990s, which was inspired by the slogan “Europe without borders” seems to be an unattained goal. Besides others one of the reasons is the inability of Albanians to know well Europe and their inability to travel to Europe without having to have a visa.

With the passing of the years, paradoxically, the “Berlin wall” started to be transformed into a “Schengen wall”. The long queue of citizens at the insurmountable doors of the European consulates became a meaningful symbol for this. Unluckily, the image of the EU in the eyes of citizens of Eastern Europe and the Western Balkans in most of the cases was tied to visa policy rather than to development, well-being and progress<sup>2</sup>.

The EU claims it does not want a Balkan region plagued with extreme nationalism and religious intolerance on its borders but that is what its

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1 According to a report of Henley & Partners Institute, “The Henley International Visa Restrictions Index”, 2006, Albania is the 184<sup>th</sup> country in a list of 192 countries.

2 In connection with this argument see “Neighbors and Visas”, Stefan Batory Foundation, September 2006, pg. 7, [www.batory.org.pl](http://www.batory.org.pl).

visa policies are helping to create<sup>3</sup>. In the eve of the Thessaloniki Summit the former Finnish President Martti Ahtisaari has rightfully argued that:

“a clear signal of European commitment to the region would be if the EU would ease and then lift the visa regime, as it did with Croatia. At present, visas make travel from the region to the European Union difficult”<sup>4</sup>.

The European Commission appears on the same line, stressing in its Enlargement Strategy for 2007-2008 the need for a more facilitated visa regime for citizens of the Western Balkans towards the European Union, while recalling the commitment of the EU in the Thessaloniki Summit to make the lifting of visa regime a reality. This commitment is combined with calls for domestic reforms in the countries of the Western Balkans<sup>5</sup>.

Obviously with a deepening European integration process of the Western Balkans countries the need for the EU to have a mid term goal for lifting the visa regime is more present than ever. The lifting of visa regime should not be bound to the accession, as this is a complex process which requires a longer time. Moreover, this goal should not be limited only to insufficient instruments or vague declarations. To the contrary, a clear strategy that identifies the criteria that should be met by the Western Balkans countries is needed as the only guarantee for lifting the visa regime.

This study is a modest effort which aims at identifying ways that would enable the lifting of the visa regime between Albania and the European Union following a logic according to which this is a two way process; on the one side a real commitment of the EU is required and on the other there should be a strong willingness by the Albanian Government to reach the necessary standards for lifting the visa regime.

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3 See “EU visas and the Western Balkans”, International Crisis Group, Europe Report, No. 168, pg. 10, 29 November 2005.

4 Comment of former Finnish President Martti Ahtisaari, “Give Balkan nations their proper place in Europe”, *International Herald Tribune*, 21 June 2003.

5 See Enlargement Strategy and Main Challenges 2007-2008, Brussels, 6.11.2007, COM (2007) 663 final.



For this purpose, the study will focus on the regional and Schengen dimension of movement of persons, the difficult situation of Albanians vis-à-vis Schengen, as shown by a high level of visa rejection and on the potential for improvement of such situation by the Visa Facilitation Agreement. In order to make a success of visa liberalisation process, as one of the priorities of Albanian citizens, this study analyses the positive experiences of Bulgaria and Romania, as well as the standards that should be met by Albania.



## 2 DIMENSIONS OF MOVEMENT OF PERSONS

Notwithstanding the fact that movement of persons has both a regional and an international dimension, because of a growing need of Albanian citizens to keep their contacts with the Schengen area, the public attention on the latter is higher. Nevertheless, it would not be correct to talk only about the “Schengen Wall”, because if we analyse the regional geography of visa regimes, we would find that the governments of the Western Balkans countries have turned their eyes to Brussels for liberalised visa regimes, while “forgetting” to do the same thing with each other. Therefore, in this chapter we will be dealing with two dimensions of free movement: the regional and Schengen dimension.

### 2.1 Regional geography of visas

Free movement of Albanians in the region is governed by bilateral agreements that have lifted unilaterally, and sometimes also bilaterally, visa requirements for citizens of the contracting parties. For instance, Croatian citizens do not need to be in possession of a visa to enter Albania. Albania and Montenegro have lifted bilaterally the visa regime. The Turkish visas are issued to Albanian citizens at the border for 10 Euros, without having to go through any difficult procedure. Meanwhile Turkish citizens do not need to be in possession of a visa when entering Albania. Macedonia is the country with which Albania has double procedures for getting visas both at the respective consular offices in Tirana and Skopje and at the border crossing points.

The visa regime with Serbia and Bosnia and Herzegovina is a significant story for understanding the forms and the spiral of cooperation among the countries of the region. During the summer time, last two years, visas for citizens of these countries were lifted by Albania to increase the flow of tourists. Recently, the Albanian Government decided to lift completely the visa regime, while in fact establishing an asymmetrical regime, since Albanian citizens still need a visa to enter Serbia and Bosnia and Herzegovina<sup>6</sup>.

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6 See Decision of Council of Ministers no. 351, dated 14.06.2007.

The table below, which includes also two EU Member States Bulgaria and Romania for study and, shows clearly that Albanian citizens stand in the least favored position compared to their neighbors, since they need visas to enter every country of the region, with the exception of Montenegro.

Entry to ↓	Citizens of							
	Albania	Bosnia	Bulgaria	Croatia	Montenegro	Macedonia	Romania	Serbia
Albania		NV	NV	NV	NV	At the border	NV	NV
Bosnia	V		V	NV	NV	NV	V	NV
Bulgaria	V	V		NV	V	V	NV	V
Croatia	V	NV	NV		NV	NV	NV	NV
Montenegro	NV	NV	NV	NV		NV	NV	NV
Macedonia	At the border	NV	NV	NV	NV		NV	NV
Romania	V	V	NV	NV	V	V		V
Serbia	V	NV	NV	NV	NV	NV	V	

Table I: Movement of citizens of the region.

V – Entry visa is required

NV – No entry visa is required

The more favorable situation of our neighbors is a result of the bilateral agreements that reflect their living together under the umbrella of ex-Yugoslavia. The dual citizenship earned as a result of mixed marriages is another reason in favour of the movement of these citizens not only within the region but also in the Schengen area. For example, a Bosnian citizen who also has a Croatian passport can move freely with it to Schengen Member States.

The current situation calls for an energetic interaction by the Albanian Government with the countries of the region, in order to ensure the free movement of Albanian citizens through the establishment of a symmetrical system of benefits. Increased exchanges among the countries of the region are a precondition for benefiting from the opportunities offered by CEFTA, the unified free trade agreement. But, obviously a strict visa regime is not in favour of a proper use of opportunities offered by CEFTA; the more so when it is known that this agreement centers exactly on provision of services.

Thus, the governments of the countries of the region should work together to make real first and foremost the free movement of persons among them. Regional cooperation geared towards free movement of persons would yield positive effects even in their relations with the EU. If one day, one of the countries of the region would be ready in terms of fulfilling the obligations for moving into the positive Schengen list, it would be difficult to amend the Regulation of the Council of the EU, which defines such list, only for one country. If regional cooperation would be more productive and the Council of the EU would deal with a group of countries that meet the criteria of the positive Schengen list, then the benefit would be potentially greater and quicker<sup>7</sup>.

## **2.2 Schengen Area**

Before we analyse the visa situation with Schengen consulates in Albania, we will shed light into the Schengen Agreement so that rights and obligations deriving therefrom for citizens of third countries and the level of harmonisation that should exist among Schengen Member States are better understood. There are no doubts that the Schengen system aims at further unifying procedures in the consular services of Member States, while at the same time enabling us to enter with one visa not only in one country, but to a larger geographic area called Schengen.

### **2.2.1 Schengen Agreement**

One of the facts that we face when traveling to the EU Member States and primarily to those members of the Schengen Agreement is that we are asked by border authorities to show our travel documents twice; when we enter and leave the EU territory. For many travelers it is important to explain that the reasons relate to the rules determined in the Schengen Agreement and Convention Implementing the Schengen Agreement.

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<sup>7</sup> Interview with Mrs. Antoinette Primatarova, Ambassador of the Republic of Bulgaria to the EU during 1997-2001 held on 29 May 2007, Sofia, Bulgaria.

The small town of Schengen in Luxembourg became famous after 1985 when Belgium, France, Germany, Luxembourg and the Netherlands signed what is today known as the Schengen Agreement. Essentially this agreement deals with the full removal of controls at the internal borders while transferring them at the external borders. This agreement also provides for security measures in connection with prevention of illegal immigration, police cooperation and crime prevention and harmonisation of regulations concerning smuggling of drugs, weapons and explosives. Thus, it is clear that the number of matters related to the ultimate goal of eliminating the borders is rather high. Therefore, involvement and cooperation of many state institutions is required.

After 21 December 2007 Schengen underwent its bigger enlargement in history. As a consequence, 24 European countries acceded to the Schengen Agreement. An interesting fact is that Norway and Iceland, even though not EU Member States, fully participate in the Schengen system through a specific agreement. Whereas United Kingdom and Ireland refuse to accede to this agreement, arguing that eliminating the borders is not acceptable. They accepted a limited participation in the Schengen system only with respect to specific issues in order to eliminate the risk of their isolation.

Such diversity in terms of participation of European countries in different ways in the Schengen system is possible because of the nature of this agreement whose connection with EU law is both direct and indirect<sup>8</sup>.

## **2.2.2 Convention Implementing the Schengen Agreement**

Convention Implementing the Agreement is composed of four parts. The first part entitled “Definitions” lists definitions of key and most important terms about internal borders, external borders and aliens. The second part entitled “Abolition of checks at internal borders and

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8 Article 140 of the Convention Implementing the Schengen Agreement provides that EU Member States may adhere to the Schengen system. While article 134 states that the provisions of the Convention apply as long as they are in compliance with EU law.

movement of persons” is considered as the most important part of the Convention because it provides for free movement of persons while eliminating in a definite way checks at the border points within the Schengen area. Unlike internal borders, the external borders gained primary relevance as a consequence of removing internal borders and the need to guarantee an area of freedom, security and justice in the EU.

This is the reason why today there is a shift according to which external borders of the EU are managed jointly in accordance with the interest of all Member States and on the basis of internal regulations adopted by the Schengen participating countries. Thus, border checks and security is not individual responsibility anymore but it is done jointly vis-à-vis third countries. This means that the land border between Greece and Albania or the sea border line between Italy and Albania are actually borders between Albania and the Schengen participating countries.

The third part entitled “Police and security” covers cooperation among police authorities of the Member States. This mechanism was established for purposes of exchange of necessary information, protection of external borders and cross-border surveillance. For example the police authorities of one country may prosecute suspects of criminal activities in the territory of another Member State based on a preliminary authorisation of that state. The provisions of this part are an eloquent indicator of the fact that there is no absolute sovereignty.

The fourth part is entitled “The Schengen Information System”. This system aims inter alia at ensuring order and security, including state security in connection with movement of persons in the Schengen area while using the information transmitted through the system. The system is composed of a central structure based in Strasbourg and several other structures in every Member State of the EU, which interact and communicate intensively among them. The system contains data on specific categories of persons, vehicles and objects. The Convention guarantees protection of the data included in the system and determines strict criteria for using and reproducing the information included in the system.

### 2.2.3 Schengen positive and negative list

The Agreement and the Convention Implementing the Schengen Agreement constitute the foundations on the basis of which the whole legal system of the EU has been built, covering asylum, migration and border management matters. However, the above mentioned instruments do not regulate the relations with citizens of third countries in a direct manner.

In order to offer some alternative solutions for countries outside the Schengen area, European Council adopted a Regulation<sup>9</sup>, which specifies the criteria and the requirements that third countries should meet in order that their citizens may enter the territory of the EU without needing a visa.

The determination of those third countries whose nationals are subject to the visa requirement, and those exempt from it, is governed by a considered, case-by-case assessment of a variety of criteria relating inter alia to illegal immigration, public policy and security, and to the European Union's external relations with third countries, consideration also being given to the implications of regional coherence and reciprocity<sup>10</sup>. Based on compliance with the determined criteria, the Regulation lists those third countries the citizens of which should be in possession of visas in order to enter the territory of the EU. This list is also known as the negative list. The Regulation also lists the countries, citizens of which do not need to be in possession of a visa when they want to stay in the territory of the EU for a short time up to three months. This list is known also as the positive list.

Both lists contain countries that geographically are not in Europe. This shows that the purpose of this Regulation is to regulate the regime of movement of persons from third countries into the territory of the EU and it does not focus only on the relations of the EU with European countries, whose perspective of membership to the EU is confirmed in many documents.

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<sup>9</sup> See Regulation No. 539/2001, adopted on 15 March 2001.

<sup>10</sup> See paragraph 5 of the preamble of the Regulation.



### 3 THE SCHENGEN WALL – A MISSION IMPOSSIBLE?

While Schengen has resulted to be successful for its participating countries, the same cannot be said about third countries, of which the case of Albania offers not a very optimistic view. This is symbolised by long queues of citizens at the doors of the consulates waiting for a visa, by time consuming procedures for visa application and a handful of documents to be submitted.

The psychological frustration resulting when facing the “Schengen wall” comes along with at least two elements: first, transfer of part of the money that is spent for purposes of issuance of visa from the region to the EU; and second, the impediment of a re-integration of the region into the EU<sup>11</sup>. Furthermore, the current visa regime established by the EU has been considered by the European Parliament as:

“a regime that has been particularly pernicious for the social and economic development of the countries of south-eastern Europe. Rather than serving its original purpose, notably that of preventing local criminal networks from extending their activities outside the region, it has prevented honest students, academics, researchers and businessmen from developing close contacts with partners in the EU countries.”<sup>12</sup>

A liberal regime would not only help further development and integration of the region into the EU, but would also increase the credibility of the latter in the eyes of the citizens of the countries of the region. As pointed out wisely by Alina Mungiu-Pippidi:

“not the formal start of negotiations, but the allowance to travel visa free to EU member states for three months won the hearts of Eastern Balkans citizens”<sup>13</sup>.

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11 In connection with this argument see “Visa Policies in South Eastern Europe: A Hindrance or Stepping stone to European Integration?”, East West Institute, page 4 November 2006.

12 Opinion of the Committee of Foreign Policy of the European Parliament on the Visa Facilitation Agreement between Albania and the European Community. 4.10.2007 COM(2007)0413 - C6-0293/2007 - 2007/0148(CNS).

13 Alina Mungiu-Pippidi, “Seeking the Virtuous Circle. Migration and Development in South-Eastern Europe”, Development and Transition 2 (2005), 7-11.

But what is that really happens during an application for a Schengen visa in the consular services in Albania? In order to apply for a Schengen visa, Albanian citizens should go through the following procedure:

#### First step: Fixing an appointment with the Consular Office

The first step of a Schengen visa application procedure is considered to be fixing an appointment with the consulate by presenting oneself in the consulate (as it is the case of the Consular Office of Denmark), by calling a number of the land line Albtelcom (as it is the case of the Consular Office of Austria and the Netherlands), or a special phone line which charge added value for calls received (as it is the case of the Consular Offices of France, Italy and Greece).

Our findings indicate that the time from the moment an appointment is fixed to the moment of entering the consular office for an interview is approximately as follows:

- Consulate of Denmark: no appointment needed
- Consulate of Austria 2 working days
- Consulate of France 3-4 working days
- Consulate of the Netherlands 4-5 working days
- Consulate of Germany 1 week
- Consulate of Italy 2-3 weeks
- Consulate of Greece 2-4 weeks

#### Second step: Submitting documents to the Consular Office

The type of documents that should be submitted to each consular office depends on the type of visa that is requested and is subject to change depending on the consulate to which a visa application is submitted. However, the basic documents that are requested by all consular offices include:

- completed application form (can be obtained for free in consular offices or downloaded from their internet websites);
- 2 recent photos of the applicant;

- valid passport (the passport should be valid for a period of at least three months after the expiry of the visa that is requested) and a copy of its first page;
- birth certificate (with photograph);
- family certificate;
- international health insurance (original and 1 copy) for the whole time of planned travel;
- attestation of financial means that are adequate for travel and stay; copies of recent pays, attestation from the bank for the last 3 months;
- declaration from the employer indicating the monthly salary;
- copy of employment contract;
- documents that are not required but that are necessary for having a positive evaluation of the application such as those indicating that the applicant owns property, for example land or house.

Additional documents depending on the type of visa can be required. For example, for a visa for touristic purposes a guarantee letter from the person who sends the invitation, which should be legalised from the municipality of the city where such person is, or the hotel booking document (original is required) as well as a confirmation of the flight ticket. Whereas, for an official visit a note verbale by the responsible institution and an invitation by the inviting institution from the Schengen country, which specifies the agenda of the meeting, should be also sent to the consular office.

Some consular offices require that they be given only original documents (as it is the case of the Danish Consular Office), while some others require the original documents and photocopies, or original documents and their notarised copies (as it is the case of Consular Offices of Austria, France, Greece and the Netherlands). But there are also consular offices that require documents to be notarised, translated and legalised by the Ministry of Foreign Affairs of Albania (the case of the Consular Offices of Greece and Italy).

If an applicant fails to deliver all the documents mentioned above, the consular office restarts the application procedure, or in the best case asks the applicant to present himself again with the missing documents. In this case, the applicants coming from areas outside of Tirana have to travel again to complete the file at the consular office. This increases the visa application costs.

### Third step: Processing the visa application

Visa processing or in other words the time needed from the submission of the application up to the decision to issue or not a visa is taken also differs in different consular offices. As shown by the data given below, depending on the consular office visa processing takes from 3 days up to 8 weeks.

- Consulate of Italy 3-4 working days
- Consulate of Greece 4-7 working days
- Consulate of Austria 5 working days
- Consulate of Germany 7 working days
- Consulate of France 7 working days
- Consulate of the Netherlands 2-8 weeks
- Consulate of Denmark 3-8 weeks

## 3.1 How much does a Schengen visa really cost?

One of the most important and sensitive issues of the process of issuance of a Schengen visa is how much do citizens have to pay to get a visa. Every consular office asks that at the moment of application a citizen has to pay 35 Euros. One of the advantages of the Visa Facilitation Agreement, which will be analysed next chapter, is that the current visa fee will not be increased. Although EU law sanctions that the fee charged for issuing a visa is 35 Euros, practices of different consulates in Albania clearly show that coordination among them is lacking because differences arising from converting this fee in the local currency are conspicuous.

Consulate of Greece	35 Euros = 4.900 Lek
Consulate of Germany	35 Euros = 4.900 Lek
Consulate of Denmark	35 Euros = 4.600 Lek
Consulate of Austria	35 Euros = 4.500 Lek
Consulate of Italy	35 Euros = 4.400 Lek
Consulate of France	35 Euros = 4.400 Lek
Consulate of the Netherlands	35 Euros = 4.300 Lek
Consulate of Norway	35 Euros = 4.300 Lek

Making this fact public in a round table organised by the research group of the Agenda Institute on 26 April 2007, where representatives of different consulates in Albania were present, made it possible that there be a more favourable situation for Albanian citizens today. At the moment a fee of 35 Euros is charged by consular offices, which is paid in Albanian currency according to the exchange rate of the day as chosen by the consular office. Even though this solution is not the best one, it avoids big fluctuations from one consulate to another.

However, the fee is only one of the elements of the costs of a Schengen visa, which also include expenses of preparation of supporting documents that should be submitted to the consulate<sup>14</sup> encompassing:

1. Passport and photocopy (Lek 10)
2. Application form (filled) + 2 photographs (2 x 50= Lek 100)
3. Birth Certificate (sealed at the Prefecture: Lek 100), translated and notarised (Lek 200)
4. Family Certificate (sealed at the Prefecture: Lek 100), translated and notarised (Lek 200)
5. Copy of employment contract (approximately Lek 100), translated and notarised (approximately Lek 2000)
6. Letter by the employer indicating permission to leave work for the period of time for which the visa is requested and other details concerning monthly pays of the applicant.
7. Copies of other supporting documents indicating that the citizen owns property, translated and notarised (20+500= Lek 520)

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<sup>14</sup> Interview with S. K. a visa applicant at the Consular Office of Italy in Tirana, 6 November 2007.

8. Bank attestation for payments received for the last three months (Lek 100)
9. Health insurance for the period of time for which the visa is requested (approximately Lek 1000)

Documents should be legalised by the Ministry of Foreign Affairs of Albania and each document that should be legalised costs 100 Lek. The average number of documents that should be legalised is about four. Postal service through which the legalization process is done costs 290 Lek. While the costs of fixing an appointment by calling a number charging added value is 120 Lek per minute, amounts to a total of at least to 360 Lek. If we take into account the travel costs for applicants from outside of Tirana, a round trip ticket to the closest town costs 400 Lek<sup>15</sup>.

Receiving the passport with the visa stamped on it has its own additional costs. For example, the Consulate of Italy applies a system of delivery of passports to the address of the applicant in cooperation with the Western Union. The cost of such service is 300 Lek for Tirana and 500 Lek for outside of Tirana.

Therefore, depending on the documents that are submitted (number of pages of documents) the total costs of a visa are somewhere between 10.000 and 12.000 Lek or approximately 80-100 Euro. Thus, any analysis of the benefits occurring from non-increasing the Schengen visa fee of 35 Euro should take into account the distinction between the visa application fee and the additional costs related to supporting documentation of a visa application.

### **3.2 Refusal of a Schengen visa**

Despite the difficulties in the process of getting a visa, the number of applicants at the doors of the consular offices in Albania tends to increase. Only the last year consular offices had to deal with around 245.000 visa applications. This means that only the visa fees without

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<sup>15</sup> The applicant who was interviewed travelled from Kavaja to Tirana.

including here the additional costs necessary to get a visa amounted to around 8.575.000 Euro.

The situation with applications for Schengen visas and the rate of rejection during 2006 by consular offices in Albania is roughly indicated in the table below:

Consular offices of	Number of applicants (approximately)	Rate of approval (approximately)
Greece (3 offices)	120.000	50 % = 60.000
Italy (3 offices)	100.000	60 % = 60.000
Germany	12.000	30 % = 3.600
France	7.000	60-70 % = 4.500
The Netherlands	4.000	50 % = 2.000
Austria	2.000	
Denmark		~2.800
Norway	500	

Table 2: Statistics about applications for Schengen visas in 2006

As shown in the table, the current rate of rejection is calculated at an average of 50%. This is a high figure if compared to Ukraine, whose level of rejection amounts to 11.5%<sup>16</sup>. This gap is the most eloquent indicator of the frustration of Albanians when facing the “Schengen Wall”, but also of the fact that the instruments that the EU has offered for making the European dream reality are insufficient.

The factors that have an impact on this high rate of rejection are listed below:

- Recognition of travel documents and trustiness of them<sup>17</sup>.
- Request for supporting documents.
- Positive track record of the applicant with previous visas getting from Schengen Embassies.

<sup>16</sup> See “Questionable Achievement: EC-Ukraine Visa Facilitation Agreement”, Batory Foundation Report, November 2006 available at [www.batory.org.pl](http://www.batory.org.pl)

<sup>17</sup> Interview with the Counsel of the Netherlands in Tirana, Mrs. Janet P.C. Meijlis, 01.06.2007; Interview with the Counsel of Denmark in Tirana, Mr. Christian Andrew Deloughery and with German vice ambassador in Tirana, Mr. Jorn Beibert, 06.06.2007.

- Long queue before some of the consulates, or late interview meeting time.
- The applicant does not create a bona fide situation that she/he will return back after obtaining the visa<sup>18</sup>.
- Consular service enjoys a wide margin of appreciation in reviewing the visa application and making a decision without giving the reasons.

The solution of problems concerning the credibility of documents should come from the Albanian Government. The lack of concrete plans in this regard, of timelines and allocation of necessary budget undermine the credibility of Albania in the process of liberalisation of movement of persons towards the EU. EU visa policy for third countries shows in practice how much one administration trusts the other (and by extension its nationals)<sup>19</sup>.

### **3.3 A shortcut instead of a long term solution?**

Parallel to the absence of the possibility to move freely in the EU Member States, a shortcut has been found for a certain category of persons. The symbol of this shortcut is a liberal approach taken with respect to diplomatic and service passports. Three main problems can be underlined: firstly, a large number of the categories of beneficiary officials; secondly, issuance of such passports to private nominees such as journalists and businessmen; thirdly, usage of service passport mainly for ease of movement rather than for official service purposes. In some cases the holding of diplomatic and service passports is observed even after termination of service.

Despite the fact that the area in which one can move with these documents is not the whole area of Schengen, they still offer an

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18 Interview with the Counsel of the Netherlands in Tirana, Mrs. Janet P.C. Meijlis, 01.06.2007.

19 See "EU visas and the Western Balkans", International Crisis Group, Europe Report, No. 168, page 6, 29 November 2005.



opportunity to be able to touch Europe more freely<sup>20</sup>. The same can be said for countries of the region such as Croatia and Bulgaria. As to Schengen countries a paradox for holders of these passports exists since for some countries no visa is required (for example Slovenia, Italy, Greece and Benelux countries, Austria) while for other EU countries a Schengen visa is required. This means that holders of these passports may cross the first Schengen border (for example that of Greece or Italy) and move from there to another Schengen country, since there are no further checks within this territory.

As emphasized above, at the same time a greater possibility for free movement in and out of the Schengen area has brought an unjustified increase in the number of categories that receive such passports while questioning the seriousness of the Albanian authorities. Paradoxically, there is an inflation of decisions of the Council of Ministers<sup>21</sup> providing for 58 categories for officials to whom diplomatic passports are issued and 63 categories for officials to whom service passports are issued.

There is no reason for some of the categories to hold diplomatic passports such as deputy ministers, secretary generals of the central institutions, spouses of Members of Parliament and ministers, directors of departments of Council of Ministers, heads of central institutions and members of cabinets of highest state personalities and their bodyguards.

The same can be said for a major part of the categories that are holding service passports such as representatives of the business community, civil society, media, members of cabinets of ministers, directors of directorates in central institutions.

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20 According to the website of the Ministry of Foreign Affairs the countries for which no visa is needed for holders of Albanian diplomatic passports are Austria, South Africa, Algeria, Argentina, Belgium, Bosnia and Herzegovina, Brasil, Bulgaria, Greece, the Netherlands, Hungary, Italy, Chile, China, Costa Rica, Croatia, Luxembourg, Malta, Macedonia, Moldova, Poland, Romania, Russia, Serbia, Slovakia, Slovenia, Spain, Ukraine, Uruguay, Switzerland. Information available at [www.mfa.gov.al/shqip/vizat2.asp](http://www.mfa.gov.al/shqip/vizat2.asp).

21 There are around 11 decisions of the Council of Ministers regarding this area, of which Decision no. 335, of 02.09.1997 was followed by 10 others.

The Albanian Government should adopt a stricter approach by reviewing and determining in an exhaustive way the categories of those who should be given diplomatic or service passports. The holding of such passports should be tied to the term of official service and consequently the categories of those that may hold these documents after the term of service would be reduced noticeably. At the same time, legal and administrative measures that guarantee in practice usage of diplomatic and service passports by their holders only for purposes of official and not private trips should be taken.

### **3.4 Previous experiences with visa facilitation agreements**

The Visa Facilitation Agreement with the European Community is not the first agreement of this kind for Albania. As stressed in the beginning of this chapter, Albania has bilateral visa facilitation agreements with a number of countries. These agreements are not about lifting the visa regime or issuing visas at the border<sup>22</sup>. The analysis of bilateral agreements helps the assessment of the positive aspects and those that are critical, that will become visible during the implementation of the Visa Facilitation Agreement with the European Community. Consequently, this will help us in drawing the right conclusions. The subject matter of bilateral agreements and their method of implementation, which relies to a certain extent on the good faith and joint commitment of the parties, are similar to the Visa Facilitation Agreement with the European Community.

Albania has concluded visa facilitation agreements with the following countries:

#### **1) Russian Federation**

An agreement providing for the lifting of visa requirements for holders of diplomatic and service passports is effective since 1993<sup>23</sup>. Whereas

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<sup>22</sup> Albania has agreements for lifting visas with Malaysia, Montenegro, Israel (not effective yet), South Korea (verbal notes), Singapore (verbal notes) and Turkey. There is an agreement with Macedonia for issuing visas at the border.

<sup>23</sup> Agreement between the Republic of Albania and the Russian Federation on reciprocal travel of citizens, Tirana, 7.4.1993.

with respect to family members of citizens of both parties, participants in cultural, artistic and sports activities, the agreement provides for a smaller number of documents and a time limit of 72 hours for processing visa applications. This agreement is effective in practice only for holders of diplomatic and service passports and not for the other categories that should have benefited from facilitation of procedures. Especially the processing of visa application within the foreseen time limit has not been respected. At the same time categorisation has resulted to be inappropriate.

## 2) Bulgaria

Albania's regime of movement of persons with respect to Bulgaria is governed by the 2002 agreement for lifting the visa for holders of diplomatic and service passports, as well as for facilitating issuance of visas<sup>24</sup>. The agreement provides for facilitated visa procedures for officials, participants in cultural and artistic activities, persons traveling for humanitarian purposes, tourists traveling through touristic operators. For activities of mutual interests, it is provided that visas are issued free of charge. The agreement does not set a time limit for processing visa applications. The implementation of this agreement has been rather low. It has had consequences for Albanian citizens, because since 2003 Bulgarian citizens do not need a visa to enter Albania<sup>25</sup>.

## 3) Slovenia

The visa regime with Slovenia is governed by two agreements: the agreement for waiving diplomatic and service visas<sup>26</sup> and the agreement

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24 Agreement between the Republic of Albania and the Republic of Bulgaria concerning the facilitated visa regime for citizens of the two countries, Sofia, 31.5.2002.

25 Decision of Council of Ministers no. 439 of 5.8.2000, "On the entry, stay and treatment of foreigners in the Republic of Albania".

26 Agreement between the Republic of Albania and the Republic of Slovenia on waiving of visas for holders of diplomatic and service passports, Ljubljana, 11.7.1994.

with verbal note for facilitating issuance of visas<sup>27</sup>. The second provides for the issuance of visas within five working days for civil servants, personalities of the Albanian society in the political, social, cultural and artistic fields, business people and licensed carriers of goods. The Agreement provides for the possibility of issuance of long-term and multiple entry visas for these categories on the basis of official notes issued by the Ministry of Foreign Affairs.

Despite the fact that the agreement provides for a considerable flexibility of action for the parties, its practical results were insignificant. By the time the agreement entered into force, the Albanian Government decided to close its Embassy in Ljubljana, rendering the implementation of this agreement impossible<sup>28</sup>. On the other hand, Slovenia never had a diplomatic presence in Tirana.

#### 4) Croatia

Similarly to the case of Slovenia, two agreements have been signed with Croatia: one for lifting the visa requirements for diplomatic and service passports<sup>29</sup>, and the other for facilitating issuance of simple visas. An agreement that takes into consideration a quota of 1000 applicants, covering civil servants, personalities of art, culture and science, is effective since 2002. Long-term and multiple-entry visas can be issued within eight days if a supporting official verbal note issued by the Ministry of Foreign Affairs is sent to the Croatian Embassy in Tirana. While for the other applications the agreement provides that procedures should not exceed three days.

The agreement has worked relatively well, because the Croatian consulate has responded properly to visa applications by the Albanian authorities. However, the time period for visa issuance is not respected

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27 Agreement with Verbal Note on facilitation of visa issuance, Verbal Note no. 5026, 25.8.2003.

28 The Albanian Government ended its diplomatic presence in Ljubljana by the end of 2003.

29 Agreement between the Republic of Albania and the Republic of Croatia for waiving visas for diplomatic and service passports, Tirana, 1.3.1994.

accordingly. Croatian citizens do not need a visa to enter Albania since 2003<sup>30</sup>.

## 5) Ukraine

Albania has concluded an agreement with Ukraine for diplomatic and service visas<sup>31</sup> and an agreement with verbal note for facilitation of issuance of other visas<sup>32</sup>. The agreement provides for issuance of long-term and multiple-entry visas for about 200 applications annually to be processed within three working days for officials, personalities of art, culture and science and representatives of the business community. Because of lack of diplomatic presences in the respective countries, this agreement has not been efficient.

## 6) Italy

Besides the agreement for waiving visas for holders of diplomatic passports<sup>33</sup>, as of April 2002 the Protocol of the Joint Albanian Italian Committee<sup>34</sup> provides for a facilitated visa regime for about 500 applicants, mainly personalities of the Albanian society, civil servants and representative of the business community<sup>35</sup>, whose activity has a permanent connection with Italy. Visas are granted also to their spouses. The quota of the applicants grew three times in 2003 following a high level meeting between the Italian Prime Ministers Silvio Berlusconi and the deputy Prime Minister and Minister of Foreign Affairs of Albania Ilir Meta.

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30 Decision of Council of Ministers no.330 of 29.5.2003, on an amendment to Decision of Council of Ministers no. 439 of 5.8.2000, "On the entry, stay and treatment of foreigners in the Republic of Albania".

31 Agreement between the Republic of Albania and Ukraine for lifting visa requirements for diplomatic and service passports, Tirana on 19.4.2002.

32 Agreement with verbal note on facilitation of the visa regime, Verbal Note of 11.11.2002.

33 Agreement for lifting diplomatic visa requirements between the Republic of Albania and Italy 1995.

34 Protocol of activity of the Joint Economic Albanian Italian Committee, April 2002.

35 Interview with Mr. Bashkim Sala representative of the business community, 12.04.2007.

Since that year, Italy has granted long-term visas on a continuous basis for Albanian personalities, based on the official notes issued by the Ministry of Foreign Affairs of Albania. The Protocol with Italy has yielded the best and the most tangible results of all visa facilitating agreements. Visas issued on the basis of this agreement have permitted their beneficiaries to travel not only to Italy, but also to other Schengen or EU countries<sup>36</sup>. Despite its positive results, the Protocol with Italy, however, has had a limited application and did not apply to those persons whose work activities take place in other EU countries<sup>37</sup>.

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36 Regulation 589/06 allows Schengen visa beneficiaries to enter other countries of the EU, that are not Schengen countries, with the exception of Bulgaria and Romania for a period of 5 days.

37 Interview with Mr. Gazmend Barbullushi, Director of the General Directorate of Juridical and Consular Issues at the Ministry of Foreign Affairs, 13.03.2007.

## **4 IS THE VISA FACILITATION AGREEMENT A SUSTAINABLE SOLUTION?**

Visa facilitation agreements are a new experience for the European Community. Besides the countries of the Western Balkans, the EC has concluded similar agreements with the Russian Federation<sup>38</sup>, Moldova<sup>39</sup>, and Ukraine<sup>40</sup> adopting a similar approach despite a clear perspective of membership to the EU that the countries of the Western Balkans have, as it was confirmed in the Thessaloniki Summit of 2003.

The Visa Facilitation Agreement between Albania and the European Community aims at facilitating movement of Albanian citizens to countries of EU. The scope of the agreement includes “agents of exchange”, such as members of official delegations; representatives of the business community; journalists; representatives of civil society; pupils, students and professors, who have to travel for study, training purposes, including here exchange programmes; persons participating in scientific, cultural and artistic activities including university programmes and other exchanges; participants in international exhibitions, conferences, symposiums, seminars; family members and relatives, spouses, children, parents, grandparents, grandsons and granddaughters, siblings and their children visiting their relatives who have a regular residence permit in a Schengen country; family members visiting graves of their predecessors; attendants of funeral ceremonies; sports persons; politically persecuted people; representatives of religious communities; persons traveling for humanitarian purposes; tourists; personnel of international transportation lines.

The agreement provides for a reduced number of documents justifying the purpose of travel for these categories. To justify the purpose of travel two documents are needed; the one proving the role of the applicant in one of the categories mentioned above and the document indicating

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38 Visa Facilitation Agreement between the Russian Federation and EU, Sochi, 25.5.2006.

39 Visa Facilitation Agreement between the Republic of Moldova and EU, Brussels 16.10.2007.

40 Visa Facilitation Agreement between Ukraine and the EU, Luxembourg 18.6.2007.

the invitation from the hosting institution in one of the countries of the EU. It seems that by focusing on “agents of exchange” the agreement aims at drawing the countries of the Western Balkans closer to the EU by means of allowing those persons who adopt the values of the EU to have direct experiences in the EU and share those experiences with others once they are back to their countries<sup>41</sup>.

This agreement is considered to be the first concrete step towards the visa free travel regime for Albanian citizens to the countries of EU<sup>42</sup>. The importance of the process of visa liberalisation was endorsed in the Thessaloniki Summit and thereafter in the Stabilisation and Association Agreement<sup>43</sup>. It is also worth mentioning that the distinction between “facilitation” and “liberalisation” is not simply terminological, but it also has clearly different effects in practice.

Facilitation enables waiver of some procedures in the process of visa issuance, whereas liberalisation of visa regime entails complete lifting of this regime; thus, free movement of persons without “consular barriers” towards Schengen area for short stay as the EU applied vis-à-vis Croatia (1992), Bulgaria and Romania (2001). To make this distinction more concrete, holders of diplomatic passports will not have to be in posses of visas to travel to Schengen countries under the Facilitation Agreement. In practice, this is the only one category that benefits from a full liberalization, while the other 17 categories included in the agreement benefit from facilitation of procedures only. Thus, it remains to be seen which will be the driving force for the Albanian Government and diplomacy in terms of achieving visa liberalisation for Albanian citizens.

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41 In connection with this argument see Goran Svilanovic, “EU visa policy: The Great Wall of Schengen or the Bridge over Troubled Water”, European Parliament Brussels, 23 March 2006.

42 See the Preamble of the Visa Facilitation Agreement. Law no. 9815, of 8.10.2007, paragraph 2, “On the ratification of the Agreement between the Republic of Albania and the European Community on the facilitation of issuance of visas”.

43 The Joint Declaration of the EU and Albania in connection with article 80 of the SAA states: “We acknowledge the importance the peoples of the Western Balkans attach to the perspective of liberalisation of the EU’s visa regime towards them. We recognise that progress is dependent on implementing major reforms in areas such as the strengthening of the rule of law, combating organised crime, corruption and illegal migration, and strengthening administrative capacity in border control and security of documents”.



The smooth implementation of these agreements, together with tangible progress in basic JLS areas, will enable the Commission to start a structured dialogue on a possible visa free regime for the citizens of Western Balkan countries in the future<sup>44</sup>. But a dialogue that is not followed by a success story of reforms combined with an active diplomacy is in danger of turning into an endless process.

Some positive results could be fewer cases of abuse with visas issued, fewer fraudulent and irregular documents submitted, control of illegal immigration in general and control of foreigners in particular, issuance of secure documents (identity cards and biometrical travel documents), intensification of fight against organised crime and trafficking, and good cooperation between parties in connection with common issues.<sup>45</sup>.

#### **4.1 The two sides of the Visa Facilitation Agreement with the European Community**

Benefits arising from this agreement for citizens can be summarized in less documents to justify the purpose of travel, a specific time periods for processing visa applications, keeping the visa application fee 35 Euros and waiving this requirement for 18 specific categories, more opportunities for issuance of long-term multiple entry visas, complete waiving of visas for diplomatic passports. The agreement does not provide quotas for the number of visas to be issued. Thus, unjust differences among visa applicants who are in the same conditions are avoided.

The agreement covers a number of “agents of exchange” including those most difficult in technical terms, such as tourists, representatives of business or civil society. This shows the good will of the parties to remove existing barriers and to intensify the dynamics of exchange between Albanian and EU. The agreement provides for a preferential

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44 See the Joint Declaration of the Vice President of the European Commission Franco Frattini and the Enlargement Commissioner Olli Rehn held in the ceremony of signature of the Visa Facilitation Agreement with countries of the Western Balkans, Brussels, 18.09.2007, [www.europa.eu](http://www.europa.eu).

45 Interview with Mrs. Dafney Gogou, official of the General Directorate of Justice, Freedom and Security in Brussels 27.6.2007.

treatment of high functionaries for all the term of their office; issuance of long-term visas for term of validity up to 5 years<sup>46</sup>.

Two specific categories of the Albanian society are also in the focus of the agreement; representatives of religious communities and former political prisoners. Albania has a high migration in relation to its population<sup>47</sup>, which comes from the fall of the totalitarian regime. The agreement attempts to reflect this reality by providing for the possibility of issuing visas to close family members in direct line of Albanian citizens legally residing in one of the EU Member States<sup>48</sup>.

It is therefore expected that inclusion of these categories in the list of beneficiaries will have at least two positive effects. Firstly, it is expected that the number of visa issued for this category will increase more than for any other because the visa applications from close family members will be in high numbers. In countries where Albanian migrants live and work, primarily Italy and Greece, the possibilities in the last years, for persons with irregular stay to legalise their staying – a necessary condition for benefiting from this Agreement – have increased. Secondly, visa issuance for close family members gives to this agreement a massive dimension, which is missing in bilateral agreements, which cover only privileged categories.

In contrasts to bilateral agreements, the one with the EC provides for humanitarian cases too, including health cases and funeral cases. Albania has agreements for persons in need of medical treatment with Italy, Greece and Turkey. Up to day securing humanitarian visas for Albanian citizens was like a journey of Ulysses; making their stories a painful moral problem in the interstate relations. Thus, facilitation of procedures in these cases can be considered as the added value of this agreement.

New generations, pupils and students for the first time become part of the spirit and facilitated arrangements of the agreement. They

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46 See article 5, paragraph 1, sub-paragraph a, of the Visa Facilitation Agreement.

47 According to the National Strategy for Migration of May 2004, after 1990 1.095.000 migrations or 25% of the population left Albania.

48 See Article 3 paragraph 1, sub-paragraph (i) of the Visa Facilitation Agreement.

were addressed in this agreement in the framework of the contacts and exchanges with pupils and students from the countries of the EU. However, it should be mentioned that visas for university studies or education remain outside the scope of this agreement.

The agreement provides also for its monitoring mechanism through setting up a Joint Committee composed by Albanian and European Commission experts, assisted by experts from EU Member States. Besides monitoring, the Committee may suggest amendment of certain provisions of the agreement. As a consequence, Albania is able to play an active role by submitting not only its observations and findings, but also by increasing information exchange in order to have a proper implementation of the agreement.

Despite all the novelties mentioned above, the mechanism of action of this agreement has conflicting elements that can block or hinder its proper implementation. The background of this agreement, with the Western Balkans countries whose European perspective was never put in question being put on the same boat as other countries, such as Russia, Ukraine and Moldova shows a withdrawal, in the best case a temporary withdrawal, from the Thessaloniki Agenda. The cause roots for this withdrawal should be looked for in the migration policies that are prevailing more and more in the election agenda of the founding EU Member States<sup>49</sup>.

The EU has indeed made visa facilitation conditional upon signature of readmission agreements by the Western Balkan countries. The Hague Programme of Justice and Home Affairs of 2004 underlines the relations existing between readmission policies and facilitation agreements. From this perspective, the principal interest of the EU is conclusion of readmission agreements with the countries of the Western Balkans. While facilitation agreements are attractive instruments that enable these countries to be included in the process. As a western diplomat puts it:

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<sup>49</sup> In connection with this argument see “*Disharmony and tension*”, The Economist, page 35, 10 November, 2007.

“the EU is simply offering Facilitation Agreements in exchange for Readmission Agreements, which are on its own interest”<sup>50</sup>.

Nevertheless, the implementation of this agreement should not be considered closely tied with illegal immigration as long as this phenomenon needs first and foremost action in terms of a more rapid social and economic development of the country and an increased standard of living. This would lead us to the wrong conclusion that free movement of persons should be deferred to a later time and that the Agreement does not ensure the right result for which it was designed. From that perspective, it can become counterproductive.

Since the EU visa policy should be a visionary one, it would be better for both sides to build wide two ways bridges over troubled waters. Imposing unnecessary walls and dams in this stage will only impede a chance of both sides to hit proper directions of sustained progress and stability and hide a horizon off common future.

Despite the fact that the Schengen countries have unified procedures regulated by joint guidelines, their implementation in practice by the Schengen countries has been different. This has created difficulties for the applicants. The smooth implementation of the agreement will depend especially on the harmonised application of the visa procedures, which would avoid differentiated application. It is discouraging to see that the Guidelines prepared by the European Commission, aimed at a better harmonisation and unification by the EU Member States, are not binding from a legal point of view, but have only a political value.

More upsetting is the fact the agreement has not escaped the essential dependence of the visa policies of the EU Member States, because it does not cover key elements of decision making concerning visa. As a consequence, solutions are left to the domain of each consular service of the EU Member States.

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<sup>50</sup> Interview with the representative of a diplomatic mission of one of the Nordic countries to the EU, made possible by the Initiative for European Stability, Brussels, 20 February 2007.

Despite the fact that it is claimed that there will be less justifying documentary for the purpose of travel, the guidelines of the European Commission in relation with the implementation of the agreement show it clearly that “this does not mean a waiver of the general requirement of personal appearance for the submission of the visa application and supporting documents”<sup>51</sup>. The list of supporting documents is determined by the legislation of each of the EU Member States, leaving us with somehow complex procedures and additional costs for the visa application.

Refusal to issue visa, which is a very important element of the decision making process, is not addressed by the agreement and is under the competence of the Member States. This can be an instrument that hinders or blocks the operation of the agreement, depending on the domestic political gravity, which is translated into migration policies of different Member State of the EU.

Recognition of travel documents also remains outside the scope of the agreement and as such it can be a good reason for each EU Member State to suspend its implementation. Travel documents include passports of all types and other identity documents that have been previously recognized by the country of destination. Diplomatic, service and ordinary passports are the Albanian travel documents<sup>52</sup>. Permissions to cross the border, which are issued only for purposes of repatriation, are also considered travel documents. All these documents have not biometric data. If one of the EU Member State requires that only passports issued by third countries, which have biometric data, should be recognized, the implementation of the agreement would be suspended immediately.

Documents justifying financial means, which is a key factor for issuing or not visas are also outside the scope of the agreement. Requirements concerning such documents are usually regulated by the legislation of

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51 See Guidelines on the Implementation of the Agreement between the European Community and the Republic of Albania on facilitation of visa issuance”, page10, 30.11.2007.

52 See Law no. 8668, of 12.12.2000, “On issuance of travel passports to Albanian citizens”.

each EU Member State dealing with foreigners and are aligned with their migration policies and standards of living. Both legislation and migration policies are not unified within the EU. It may follow that consular services in Albania apply different requirements concerning documents justifying financial means.

The agreement also does not deal with refusal of entry, which is under the competence of each EU Member State. Addressing this issue in the agreement would be difficult because it is usually part of the border management procedures, which is regulated by domestic legislation on border police. Nevertheless, refusal of entry may serve as an instrument affecting the implementation of the agreement.

Including representatives of the business community is of a paramount importance, as it facilitates contacts in this area. But, a closer analysis of the facilitating mechanisms that will apply to business people indicates that an unnecessary and bureaucratic step that might be problematic in its implementation has been added. Applications for visa coming from this category must be confirmed in advance by the Chamber of Commerce of the Republic of Albania. Previous experiences reveal cases of discrimination by chambers of commerce.

Practice shows that Chambers of Commerce, in cases of requests for visas in the framework of the bilateral agreements, have asked for processing fees presenting this as a service to their members. Including these Chambers in the agreement as confirming authorities can be an opportunity to improve their revenues, which is completely contrary to the spirit of the agreement. Such confirmation is meaningless in view of the fact that for other categories similar in status, for example for representatives of the civil society, the agreement sticks to a justification of the purpose of travel only.

Including tourists in the categories of beneficiaries provides a good opportunity for the tourism industry. However, the mechanism offered

by the agreement concerning tourist visa applications has a gap that will create problems in its implementation phase, if specific measures are not taken. Touristic licensed operators should be included in lists of trustees produced by the network of the consular offices, so that they can offer touristic services to their clients to the EU Member States. Credibility of touristic operators and the image that consular offices have of them will influence competition among the subjects. In this way the agreement interferes in the Albanian market of tourism, because it does not provide mechanisms of equality that should be taken into consideration carefully during its implementation.

The scheme of the agreement includes only close family members in a direct line. Grandparents on the mother and father's side, spouses, parents (including adopted), children (including adopted), nephews and nieces (children of children). Siblings and their spouses but also nephews and nieces of this line (children of siblings) are included here. These categories play an important role in the life of Albanians and are constituent parts of their families. Even though a unilateral declaration of the European Community concerning this category has been attached to the agreement, it is not binding on the EU Member States. As a result, it remains up to the good judgment of the latter to take or not into account specific facilitation arrangements for siblings and their children and to find appropriate and functional solutions in that regard.

Keeping the visa application fee 35 Euro cannot be considered as an achievement, since visa costs include not only the visa application fee, but also costs of preparation of supporting documents. It seems that the real visa costs will continue to remain somewhere between 10.000 and 12.000 Lek or about 80-100 Euro for as long as the agreement does not eliminate supporting documents, as it is clear from the Guidelines of the European Commission<sup>53</sup>.

A fee of 35 Euro is still high. If this fee will be waived, it would be translated as a much welcomed message by Albanians, who in the future

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<sup>53</sup> See Guidelines on the Implementation of the Agreement between the European Community and the Republic of Albania on the Facilitation of Issuance of Visas", page 10, 30.11.2007.

will be part of the European Community. According to the principle of reciprocity, the visa fee should have not exceeded 10 Euro, which is as much as citizens of the EU Member States have to pay when entering Albania. Paradoxically, Albanians who have a lower level of living standards have to pay more than citizens of the EU. Similarly, paradoxical sounds the part of the agreement that provides for reviewing the fees in accordance with the principle of equality were Albania to increase the entrance fee over the level of 35 Euro<sup>54</sup>.

The agreement fixes a time period of ten days from processing visa applications<sup>55</sup>. This time period does take into account the time of waiting until the delivery of applications, or in other words the two procedural steps that should be followed, which have in fact resulted to be the main problem of time periods up to now<sup>56</sup>. As explained above, the practice of some consular offices shows that additional time periods of 10 to 60 days apply to the fixing of an appointment, delivery of visa application, and interview. Therefore, the rules of the agreement on this point do not amount to a facilitation that should be taken into account. Internal Regulations of the EU Member States or Schengen Member States provides for the same time periods concerning processing of visa applications and in some cases shorter.

Moreover, the agreement provides that the normal waiting time period can be prolonged to 30 days for special cases<sup>57</sup> without determining them. Failure to provide this in the agreement creates unnecessary gaps that can be used by the consular service, and at the same time deprives the applicant from the receiving in the due time an answer concerning the visa application.

As per the above and taking into consideration previous experiences of bilateral visa facilitation agreements, it can be said that the Visa Facilitation Agreement with the EC does not provide a sustainable solution. This agreement does not avoid “consular barriers” and the

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54 Article 6, paragraph 1, sub-paragraph 3.

55 Article 7 paragraph 1.

56 See Guidelines on the Implementation of the Agreement between the European Community and the Republic of Albania on the Facilitation of Issuance of Visas”, page 9, 30.11.2007.

57 Ibid, paragraph 2.



complex relationship on visa policy between the Member States of the EU and the European Community, which affects the implementation of this agreement by all Member States in a harmonised manner.

A smooth implementation of the obligations deriving from this agreement is a precondition to achieve visa liberalisation, which is the only sustainable solution. On the other hand, an accurate response of the consular offices of the Member States accredited in Albania towards the obligations deriving from this Agreement will be a test of the effectiveness of instruments offered by the EU in connection with the path of Albania towards European integration.



## 5 WHAT CAN BE LEARNT FROM BEST PRACTICES?

As mentioned in the previous chapter, the Visa Facilitation Agreement with the European Community cannot be considered a sustainable solution, since it does not address the most problematic elements of the current visa regime that the EU maintains vis-à-vis the Albanian citizens.

In order to move towards the lifting of visa regime it is important to keep in mind, among others, the experiences of other countries such as Bulgaria and Romania, which were included in the negative Schengen list in 1995. While, only few years later, thanks to domestic efforts and tangible reforms combined with an active diplomacy, it was possible for these countries to move to the positive Schengen list.

The story of Bulgaria and Romania is at the same time the success story that should be replicated in terms of demonstrating willingness to change and have an impact on the EU agenda, in order to lift the visa regime. The importance of this process for the citizens is underlined clearly by the former Minister of Foreign Affairs of Bulgaria Nadejda Mihaylova stating that:

“lifting of the visa regime was perceived as a real membership to the European Union”<sup>58</sup>.

### 5.1 Bulgaria

Bulgaria has for some decades gone through a totalitarian regime that had the features of an orthodox communist system similar to those of the countries of the former Soviet bloc<sup>59</sup>, with police working methods

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58 Interview with Znj. Nadejda Mihaylova, former Minister of Foreign Affairs of Bulgaria, Sofia, on 28 May 2007.

59 In connection with this argument see, Alina Mungiu-Pippidi, Wim van Meurs and Vladimir Gligorov, “*Plan B for Balkans*”, p. 47, 2007.

that certainly had a Soviet influence<sup>60</sup>. Even though Bulgaria signed its Europe Agreement with the European Union in 1993, only few years after the collapse of the communist regime, and applied for the candidate status in 1995, it lagged behind together with Romania vis-à-vis other countries of Central and Eastern Europe.

Bulgaria together with Romania were placed in the negative Schengen list in 1995 as they failed to respond it time to the requirements of the Berlin Process and to those of the Prague and Budapest Conferences in relation with readmission polices and police cooperation<sup>61</sup>. Moreover, 1996 was the year of survival for Bulgaria. 1996 had been the worst year since the reforms began, accompanied with the economic collapse, the violent protests whose culmination was the burning of the first floor of the building of the Bulgarian Parliament, but on top of all the loss of trust of Bulgarian society in the future. About 70% of wages were not paid, while the average salary was about \$11 and pensions about \$3<sup>62</sup>.

### 5.1.1 Turning point

The political crisis and the collapse in Bulgaria were fortunately accompanied by the birth of new political ideas. The crisis of 1997 also marked a clear turning point for Bulgaria. One reason for this was domestic change: a new reform-oriented government under Ivan Kostov to power that linked domestic reforms to a concrete vision of EU membership. The symbolic of change was noted when Ivan Kostov, while getting the Parliament's vote of confidence of his government, promised that Bulgaria in 10 years would be a member of the EU and for this the country had to embark on fundamental reforms.

Certainly, a large part of the political spectrum and media ridiculed Prime Minister Kostov, having into account the Bulgarian society ailing in front

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60 Interview with Ms. Nadya Dimitrova, former Director of the European Integration in the Ministry of Interiors of Bulgaria, Tirana, on 31 May 2007.

61 Ibid.

62 Interview with Ms. Juliana Nikolova, former Secretary General of the Council of Ministers of Bulgaria, Sofia, on 29 May 2007.

of an ever growing negative image of Bulgaria<sup>63</sup>. But time proved Kostov right. The reforms undertaken by his government enabled Bulgaria to be an EU Member State within 10 years.

In order to restore its deep negative image Kostov Government set the financial stability of the country as its main priority. Agricultural reform, restitution and compensation of property, border management and police, administrative reform and justice reform were also priorities of the Bulgarian Government after 1997. Nadejda Mihaylova, the then Minister of Foreign Affairs explains the post 1997 Bulgaria in relation with the European Commission and the EU Member States as:

“a bad student who tries to improve, but to do so he should not only study but also change his image in order to break through the containment and the unkind judgments around him”<sup>64</sup>.

It is in this period that a number of speedy reforms in areas closely related with the visa policy started with a view to lift the visa regime established by the EU for Bulgarian citizens. According to Mihaylova:

“the process of negotiation concerning the lifting of the visa regime can be split up into 90% of work and 10 % of trust. However, the 10% of trust is very important for the interlocutor as it enables him to evaluate different issues with kindness”<sup>65</sup>.

The negotiation process, because of a complex relationship between the European Community and EU Member States with respect to visa policy, besides the European Commission focused on representatives of the EU Member States, who assume responsibilities before the citizens they represent and who are sensitive to electoral costs. It was for this reason that Bulgarian Government had political appointees as ambassadors in the main capital cities of the European Union and at the

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63 Interview with Mr. Vladimir Kissiov, former chief negotiator of Bulgaria with the European Union, Sofia, on 29 May 2007.

64 Interview with Ms. Nadejda Mihaylova, former Minister of Foreign Affairs of Bulgaria, Sofia, on 28 May 2007.

65 Ibid.

same time concentrated the human resources of its diplomatic corpus on these diplomatic presences<sup>66</sup>.

As a consequence, it should be understood that it is very important that EU Member States not only have a positive approach toward the said problem, but also be included in the process in an active way. The involvement of the European Parliament was also another objective that was achieved by Bulgaria in its process of visa liberalization<sup>67</sup>.

Unlike Romania, which perceived the lifting of the visa regime with the EU as a profoundly political issue, Bulgaria placed the process both in a political and technical context. An eloquent indicator of this finding is the fact that Romania lagged behind in relation with reforms in the area of border control and security of identification documents and started to change its direction drastically after Bulgaria moved to the positive Schengen list<sup>68</sup>.

### **5.1.2 Successful reforms and liberalization of the visa regime with the EU**

Within six months Bulgaria managed to identify the main tasks that had to be done in areas related closely to the visa policy as the only way to come out of the negative Schengen list and to struggle with the skepticism surrounding the country. Pursuant to its Visa Action Plan, which identified measures that needed to be taken, the Bulgarian Government reported on the progress achieved, monthly, on its own initiative, to the European Commission and the EU Member States or ambassadors accredited in Bulgaria<sup>69</sup>.

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66 Interview with Mr. Niky Mladenov, MEP, former Member of Bulgarian Parliament, Sofia, on 29 May 2007.

67 Ibid.

68 Interview with Mr. Vladimir Shopov, former advisor of the Minister of Interior and representative of Bulgaria in the diplomatic mission to the European Union, Sofia, on 29 May 2007.

69 Interview with Mr. Vladimir Kissiov, former chief negotiator of Bulgaria with the European Union, Sofia, on 29 May 2007.

Since the European Commission had not designed any strategy in relation with the steps that Bulgaria had to undertake in order to achieve its objectives, Bulgaria itself, in informal ways, sent various legislative acts or action plans to the European Commission with a view to improve their quality and to achieve a higher involvement of the Commission in this process<sup>70</sup>.

Regarding border police and integrated border management, Bulgaria besides aligning its legislation with that of the EU changed completely the hierarchical structure of the border police and the training curricula, while using effectively the financial and technical assistance of the EU as well as bilateral assistance when bureaucracy in disbursing the EU financial assistance hindered the achievement of ultimate goals.

Prioritization was done in close cooperation with different EU Member States that had the necessary expertise such as Germany, France and Spain. At the same time, the border crossing points were under a constant process of modernization while giving priority to the border with Turkey and the Black Sea.

The strategy adopted by Bulgaria in channeling Community Assistance and expertise into the operational level and the action taken by the Bulgarian border police in order to increase the confidence of its partners are also interesting. It was not for no reason that the 2001 Annual Report of the European Commission acknowledged the essential progress of Bulgaria in this regard<sup>71</sup>.

In relation with its visa policy, Bulgaria gradually aligned the visa regime with the positive and negative Schengen lists, as well as the model and the visa security elements. The establishment of the Visa Centre at the Ministry of Foreign Affairs, which was the responsible structure for the final approval of visa issuance and administration of the electronic system of the data, was considered an achievement in terms of approximation

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70 Interview with Mr. Vladimir Shopov, former advisor of the Minister of Interiors and representative of Bulgaria in the diplomatic mission in the European Union, Sofia, on 29 May 2007.

71 See Commission Report [COM (2001) 700 final – SEC (2002) 1400.

with the Schengen standards. The electronic system, which is similar to the Schengen system, enabled the Visa Centre to be online with consular offices and the crossing border points of Bulgaria.

As to the improvement of security of identification documents, which is a key element in the process of liberalization of the visa regime, Bulgaria replaced all identification documents (passports, identity cards, driving licenses) within three years. This complex undertaking was accompanied by legislative changes and provision of the main crossing border points with special equipment to prevent falsification.

In relation with the migration policy, a number of key changes were reflected in the Bulgarian legislation dealing with family reunion, marriages for potential migration purposes and readmission policies. The adopted legislation held transportation companies of illegal persons liable and charged them with the financial costs of treatment of illegal persons and return to their home countries. A special register for foreign citizens working in Bulgaria was established too.

Bulgaria is not on the list of those countries that have a high number of migrants. Unlike Albania its dependency of the Gross Domestic Product from the remittances is not considerable. According to the Former Minister of Foreign Affairs Mihaylova:

“Bulgaria is a success story because the lifting of the visa regime did not lead to either migration waves to the EU or to immediate changes in the labor market”<sup>72</sup>.

Employment of Bulgarians in the EU Member States was not foreseen to come in an automatic way even with the membership to the EU of Bulgaria. However, the lifting of the visa regime was accompanied by an agreement of seasonal employment, which can be considered as another positive aspect of the process of liberalization of movement of persons.

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<sup>72</sup> Interview with Ms. Nadejda Mihaylova, former Minister of Foreign Affairs of Bulgaria, Sofia, on 28 May 2007.



As to asylum policies, Bulgaria focused on bringing its domestic legislation in line with the Geneva Convention and the New York Protocol and it prepared a national plan for the integration of refugees. Reception Centers of refugees were established and started to function effectively. While, with the passing of the time the number of applicants who sought asylum in Bulgaria was decreasing.

## 5.2 Romania

Romania has gone through a totalitarian regime, essentially a Stalinist one, similar to that of Albania for several decades<sup>73</sup>. Besides structural problems and a non functional market, which were common features for almost all former communist countries, the legacy of the system of Ceausescu together with the forced payment of high foreign debts, added to the Romanian economy a series of other problems<sup>74</sup> making its transformation into a functional market economy difficult.

Romania established its diplomatic relations with the EU in 1990 and a year later signed the Trade Cooperation Agreement. Whereas, the Europe Agreement entered into force on February 1995 paving the way to Romania's application and granting of the candidate status in 1999. Notwithstanding the formal progress of the European integration process, Romania was on the negative Schengen list, which means a visa regime for Romanian citizens who wanted to travel to EU Member States.

From a country in the middle of an economic crisis and several other problems that culminated in 1997, Romania managed to become a member of the EU in just one decade. The success story of reforms in the area of justice and home affairs increased the credibility of Romania in front of the EU. This made it possible for the removal of the visa regime for Romanian citizens despite the sensibilities concerning this issue in EU Member States and symptoms accompanying the Romanian transition, which is not short of similarities with the Albanian reality.

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73 In connection with this argument see Alina Mungiu-Pippidi, Wim van Meurs and Vladimir Gligorov, "*Plan B for Balkans*", p. 47, 2007.

74 World Bank Report, 2005.

### **5.2.1 Successful reforms and liberalization of the visa regime with the EU**

On 15 March 2001, the Council of the EU amended Regulation (EC) 539/2001<sup>75</sup> which defines the list of third countries the citizens of which should be issued visas in order to enter the Schengen area. This amendment moved Romania and Bulgaria from the negative Schengen list to the positive one. Nevertheless, this change did not become effective immediately for Romania because the Council of the EU decided to defer the entry into force to a later time, after receiving an evaluation report by the European Commission in relation with the progress of reforms in areas that were considered to be critical for the liberalizations of the visa regime.

The approach of the EU vis-à-vis Romania in connection with the visa policy, besides being an eloquent indicator of the effectiveness of the principle of conditionality, shows a higher involvement of the European Commission in this process, since the Commission was entrusted with the evaluation of the progress of reforms, primarily in the area of migration, border control and readmission policies, which was a separate process from that of accession to the EU. Moreover, by embracing the principle of conditionality EU sent a clear message for Romanian citizens that the lifting of the visa regime depended on the willingness of their government to undertake reforms close related to visa policy.

The effective move of Romania to the positive list was closely related to the measures that were taken to stop the illegal migration, which is one of the most problematic issues as mentioned in the Council Regulation (EC) 539/2001<sup>76</sup>. Due to this reason, the bulk of energy of the Romanian Government centered on a Visa Action Plan, which provided for the necessary measures to be undertaken in order to effectively achieve the move of Romania to the positive Schengen list.

As to border control, besides aligning its legislation to that of the EU, Romania reorganized its border police through simplifying its hierarchical

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<sup>75</sup> Council Regulation (EC) 539/2001 of 15 March 2001, OJ L 81, 21.3 2001, p. 1.

<sup>76</sup> See article 8 paragrafi (2) of the Regulation.

structure and providing for an obligatory initial training of 3 months for its new officials. In addition, the cooperation of border police with other authorities including the Office for Refugees and airline carriers was enhanced. Considerable investments in equipment were made due to the increase in the state budget and the financial assistance offered by the EU. In order to increase the effectiveness of checks of travel documents, the border police was involved in trainings of staff of airline carriers.

In relation to visa policies, Romania aligned gradually its visa regime with the positive and negative Schengen lists, by amending its legislation on foreigners and restricting the issuance of visas for the countries of the former Soviet Union and Western Balkans. Romania also eliminated gradually visa issuance at the border crossing points. At the same time, Romania established a centralized system of visa issuance by meeting one of the Schengen criteria. Romanian consular offices were linked in a network with the National Centre of Visas, which had the final saying concerning issuance of visas. While, visa applications with high risk of immigration were sent for a further check to the Ministry of Interior.

The adoption of a new model of the Romanian passport with an added number of security elements in compliance with international standards was considered of a paramount importance for the process of liberalization of the visa regime and improvement of identification documents quality. Added security elements were also foreseen for travel documents of asylum seekers. These documents together with the newly adopted visa model with higher security elements, similar to Schengen visa, influenced the decision to move Romania to the positive Schengen list.

As to migration policies, it was felt necessary to address irregular migration and expulsion by means of adopting legislation on foreigners and determination of procedures for checks of documents, visa issuance, residence permits, prohibition of re-entry to Romania for a certain period of time and decision-making in cases of expulsion. The adopted legislation held the transportation companies carrying illegal persons liable and charged them the financial costs of treatment of these illegal

persons and their return to their home countries. While, the system of granting work permits was made more stringent and the conditions for obtaining such permits were determined in a clearer way in legislation.

Illegal migration of Romanian citizens was one of the key issues to be addressed by the Romanian government, in order to make possible the effective move to the positive Schengen list. Due to this reason, restrictive measures for Romanian citizens were taken. This was a fine filter for the illegal migration.

For instance, citizens who were caught while crossing the border illegally or who were repatriated on the basis of readmission agreements were penalized by suspension of their passport for a period of 3 to 12 months. The same happened in respect to persons who had committed criminal offences abroad. Legislation provided that entry or exit from the country in violation of the law was a criminal offence.

It is interesting to note that in order to prevent illegal migration the first barrier was shifted from the Schengen border to the Romanian border police itself, which was in charge of checking all documents of citizens leaving the country, such as those concerning health insurance and sufficient financial means. If the border police deemed that a citizen had migration potentials and his documents were not complete, his passport could be suspended provisionally.

The Romanian Government also focused on making the rules for acquiring Romanian citizenship more stringent. The time required for acquiring Romanian citizenship was doubled and the ways for acquiring it (only through an individual application) were redefined by means of repealing the law that allowed for an automatic acquiring of citizenship through repatriation.

As to asylum policies, besides bringing its legislation in line with the Geneva Convention and the New York Protocol, Romania provided for persons who had been granted the refugee status a financial treatment for a period of 9 months. Also, Romania published the official list of safe third countries and the list of countries where no possibility of

persecution existed. These lists were modified in order to be fully in line with the *acquis*.

Three Reception Centers were established and became operational for hosting refugees. The National Office for Refugees was completed with staff. This had a positive impact in treating cases at a level of 90% within the 30 days (legal deadline).

As per the above, it can be said that the lifting of the visa regime with Bulgaria and Romania should be dedicated in the first place to the progress of domestic reforms in areas related to the visa policy and the political determination of these countries.

Secondly, it is also a story of political courage and vision on the part of the European Union, which decided from the outset to treat Bulgaria and Rumania similarly to other, seemingly more advanced candidates for EU accession. It is the story of the success of single-minded determination. On the other hand, the EU by moving Bulgaria and Romania to the positive Schengen list separated in a strategic way the process of lifting the visa regime from that of EU accession



## 6 IN SEARCH OF A SUCCESS STORY

As the Bulgarian and Romanian experience have shown, accomplishing the reforms in the fields closely linked with visa policy is the main axis through which the liberalization of visa regime could be attained. European Commission has clearly expressed its commitment in the Enlargement Strategy 2007-2008, to gradually move forward the liberalization of visa regime for Western Balkans countries by undertaking concrete steps, based on individual merits of each country<sup>77</sup>.

Due to this reason the current situation in the fields affecting visa policy is analyzed and recommendations are put forward for policy makers in order to help the process of meeting the required standards to be put on the positive Schengen list.

### 6.1 Asylum

By adhering to a series of conventions, Albania has committed itself in the international level to build up an asylum system. However, this commitment has a more actual and meaningful dimension in a closer regional dimension, in the relations of the country with the European Union. If put against a historical and contemporary background, asylum does not seem to be in need of immediate intervention for Albania. For a long time under the communist regime, but even right after it, Albania was a producing rather than a hosting country of asylum seekers. Similarly at present times, the number of those seeking asylum in Albania amounts to few dozens. These cases mostly relate to situations of immigrants transiting to EU Member States.

Nevertheless, the visa liberalization perspective for Albanian citizens is related with the existence of a functional asylum system. This system, together with the Readmission Agreement, which provides for return to Albania of Albanian or third countries citizens who have entered illegally

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<sup>77</sup> See, Enlargement Strategy and Main Challenges 2007-2008, Brussels, 6.11.2007, COM (2007) 663 final.

the EU Member States through Albania, offers control mechanisms for the entry, movement, protection and adequate treatment of citizens of third countries.

From a practical point of view, the building of an asylum system is a task slightly easier compared to other tasks that the Albanian Government should complete. There are a number of reasons for this: a low flow of asylum seekers, the positive developments in legislation so far, the establishment and functioning of the relevant structures, the continuous assistance offered by the UNHCR and other programmes of assistance, as well as a low budget required in this area.

### **6.1.1 Legal standards**

Asylum is the protection provided to foreign persons to whom the status of refugees has been granted. Such status is granted where it is proven through legal procedures that there is a well ground fear that this person will be persecuted on grounds of race, religious belief, ethnicity, belonging to a social group or political conviction. The protection offered to refugees includes living expenses of these persons to an indefinite time until the threat ceases to exist and the person can freely return to his country.

The legal framework on asylum in Albania is relatively in compliance with international standards of protection of refugees<sup>78</sup>. The definition of refugees in Albanian legislation is the same as that of the Geneva Convention Relating the Status of the Refugees of 1951 and the Protocol of New York of 1976, two international instruments internationally accepted by nations.

In addition, the treatment of refugees in Albania is governed by constitutional principles and rules provided for by specific laws. The 1998 Constitution provides for fundamental guarantees including non-refoulement, non-extradition of foreigners, either individually or collectively, as well as the right to asylum in the Albanian territory.

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<sup>78</sup> See, Albania 2007 Progress Report COM (2007)663 final.



Personal guarantees, economical and social rights of refugees, procedures for requesting and acquiring this status are regulated in a more detailed manner in the Law on Asylum adopted in 1998 and the Law on the integration and family reunion of citizens that have been granted asylum adopted in 2003. Specific elements of treatment of asylum seekers at the moment they introduce themselves at the border are regulated by the Law on Foreigners of 1999 and the Law on the Protection and Control of the State Border of 2001.

Notwithstanding this complete legal structure a lot remains to be done with respect to its approximation with the EU legislation. According to the National Plan for the Implementation of the SAA, Albania will take several measures in the next two years. These measures include granting work permits to asylum seekers and refugees, setting criteria for determining amounts of their compensation, issuing of travel documents to foreign citizens, obtaining information from the country of origin, as well as measures for ensuring personal data protection in connection with all asylum seekers and refugees.

The executive structure for the implementation of the asylum legislation is the Directorate for Citizenship and Refugees in the Ministry of Interior. This directorate processes and accepts requests for asylum and implements measures concerning protection and assistance to refugees. An asylum seeker's recourse in cases of refusal to grant asylum can be submitted to the National Committee for Refugees and after that to the Court of First Instance, which reviews administrative acts of authorities responsible for granting asylum.

### **6.1.2 Effectiveness of asylum system**

Parallel to the positive legislation developments a number of processes aimed at meeting its specific requirements have been carried out. The pre-screening process through which persons in need of special protection in all border crossing points are identified, the establishment and functioning of the Reception Centre in Babrru with a hosting

capacity of 200 asylum seekers, the issuing of identification documents to all refugees and asylum seekers can be mentioned here.

Nevertheless, key elements of the implementation of legislation should be further improved. Strengthening the administrative capacities remains the weakest point of the asylum system in Albania. The European Commission 2007 Progress Report continues to underline the same problems dealt with in the previous year report, pointing out that: "Staff changes as a result of the restructuring of the directorate for nationality and refugees have continued to hinder its capacity and delay decision-making<sup>79</sup>". Consequently, observing legal time limits and taking decisions in a timely fashion by the authorities remains problematic. The 51 days legal time limit for processing a request for asylum is considered to be relatively short, by the structures that do the processing.

There have been few requests for asylum during the last years. These requests could be afforded by the Albanian Government. Costs of processing asylum request and costs of supporting the persons that have acquired the refugee status are shared equally by the Albanian Government and the UNHCR. Currently, 108 foreign citizens have been granted the refugee status. They come mainly from Kosovo, China, India, Nepal, Morocco and Egypt.

There is an interesting fact about Albania being the only country that has admitted asylum seekers who came out of a long stay in the high security prison of Guantanamo Bay. The specific situations of these persons such as the language of communication, different religious beliefs, psychological problems, adjustment to an environment unknown before call for a high preparation of the responsible staff and a joint commitment of state institutions concerning their treatment.

Another weakness of the Albanian asylum system that has been identified is the lack of information concerning the country of origin of the asylum seeker during the pre-screening process at the border. Even though the National Plan for the Implementation of the SAA provides for the establishment of a centre for obtaining information from the country of origin within 2008, unfortunately no preparatory measure for this has

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<sup>79</sup> Albania 2007 Progress Report COM (2007)663 final, page 44, and Albania 2006 Progress Report, COM (2006) 649 final, page 39.

been taken and no financial support has been provided for in the state budget or in foreign assistance projects.

Measures for improving the standards in the area of asylum should include the establishment of the Center for Obtaining Information from the countries of origin and for strengthening the administrative capacities responsible for asylum.

## 6.2 Migration

The history of Albania abounds of cases of individual or massive migration, regular or irregular, controlled or uncontrolled by state authorities. This is so true that social dramas associated with migration have become part of the country's folklore. Destination countries of Albanians were as different as the economical and sometimes even political circumstances causing these movements.

The National Strategy on Migration<sup>80</sup> gives a rough account of the number of Albanian citizens who work and live mainly in European countries but also in other continents. The countries where most of the Albanian migrants are established and work are Greece, Italy followed by the United Kingdom and Germany. A smaller number has been established in France, Austria and the Netherlands as well as in the USA and Canada.

The impact of migration in the economy of the country is unquestionable. Remittances of migrants constitute one of the main pillars of the Albanian economy through ensuring a continuous entry of foreign currency in the country and through strengthening the basis of savings and investment. According to the data of the Bank of Albania<sup>81</sup> the contribution of the money sent by migrants over the last 10 years is estimated to 15% of the gross domestic product. Also the contribution of these remittances to trade over the last 10 years is estimated to 58.8%.

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80 As adopted by Decision of Council of Ministers no. 760 of 19.11.2004 On the adoption of the National Strategy on Migration.

81 The Statistics Bulletin in years available at <http://www.bankofalbania.org>

On the other hand, there is a growing number of foreign citizens coming to Albania for employment purposes. According to the data of experts of the Ministry of Labour Social Issues and Equal Opportunities (MLSIEO)<sup>82</sup> production, trade, education, construction, gambling, banking and other services are the most attractive sectors. The majority of foreign citizens have concentrated in the main districts of the country including Tirana, Elbasan, Korça, Durrës, Vlora and Fier. These foreigners primarily have Chinese, Greek, Italian, Romanian, Macedonian citizenship, but in some cases even American.

However, it should be underlined that the data of the MLSIEO do not give the real numbers of the entrance flow of economically active foreigners in the country. They rather represent that part of the foreigners working force that engage in regular economic activities that are subject to control of the State Labour Inspectorate. The lack of a continuous and effective control makes the real number of foreigners working and staying in Albania still unknown for the Albanian institutions.

Similarly the entrance flow of foreigners from some countries such as Greece, Italy, Macedonia or Kosovo remains still unknown to a full extent because of failure of citizens of these countries to apply for work permits. Chinese and Turkish citizens are those that generally request work permits for reasons mostly related to their being distant from their countries. Consequently they move less frequently from Albania and work and residence permits are indispensable for them.

For all the foregoing reasons, in the eyes of the EU, Albania has constantly been one of the main countries of illegal immigration towards its Member States and also a country of uncontrolled entrance flows. It was exactly for this reason, that by the end of 1999 the Council of Ministers of the EU, identified as a main objective the financing of initiatives and programmes aimed at preventing illegal immigration from Albania while combining it with political pressures from the EC and its Member States in order to encourage the fight against illegal migration and the implementation of bilateral readmission agreements by the Albanian authorities.

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<sup>82</sup> Interview with the Director of the Directorate of Migration Policies, Majlinda Hafizi, 27 March 2007.

Nevertheless the sensitivity of the EU concerning problems of illegal immigration does not center on Albania but on all countries of the Western Balkans. In March 2001, the EU Member States and the countries of the Stabilisation and Association Process became part of a cooperation process, namely the Migration Asylum and Refugee Regional Initiative (MARRI). The goal of this initiative is approximation of domestic legislation of these countries with the European standards and improvement of regional cooperation according to a coordinated method in connection with issues of migration and asylum policies in the region. Furthermore, in its strategy for Albania 2002-2006, the EU determined that the priorities in the area of asylum and migration were the effective fight against trafficking and illegal immigration and the creation of appropriate structures for asylum and migration.

It is exactly these priorities that constitute the focus of reform that the Albanian Government should undertake. In more concrete terms reform should encompass fight against illegal migration, control of migrants' flows and channeling such flows in legal ways of migration, increasing the influence of education and professional training courses, encouraging voluntary return of illegal migrants, and investment of their income in profiting activities in the country. On the other hand, legal standards concerning treatment of foreign citizens coming to Albania for purposes of employment in line with international standards should be ensured. This should be combined with careful controls so that Albania does not become a safe passage of illegal immigrants to other European countries.

### **6.2.1 Strategic planning in the area of migration**

The Albanian Government has undertaken a number of legal and institutional initiatives aimed at achieving improvements in the area of migration. These initiatives have always had the financial support of the EU and other international organizations involved in this area, especially the International Organisation for Migration (IOM).

The National Strategy for Migration designed by the MLSIEO in cooperation with the IOM, and with the financial support of CARDS is

the basic document that addresses the main problems in this area. Also, the National Action Plan for Migration<sup>83</sup> describes all steps that the Albanian Government should undertake to manage the migration flows and to design a comprehensive policy on migration.

This policy deals with important issues such as protecting the rights of Albanian migrants and creating and unifying Albanian communities abroad, directing income of migrants to business investments, designing an appropriate policy concerning migration for purposes of employment, facilitating travel of Albanian citizens in connection with short term visa requirements and the development of a proper legal and institutional framework.

Despite such a comprehensive approach concerning migration problems, the implementation of this strategy by the responsible institutions remains poor. An assessment concerning the implementation of the National Action Plan for Migration<sup>84</sup> shows that of 63 measures that should have been taken by December 2006 only 28% or 33 measures were taken.

The reasons for such a poor level of achievement relate to the general context of changes in the public administration after the political changes with the general elections of 3 July 2005. The restructuring of many ministries and institutions in several cases was associated with staff turnover in the administration responsible for implementing strategic documents in the area of migration.

Other factors for the poor implementation relate more specifically to the migration policy, such as a level of acquaintance of the public administration with the obligations of the Plan of only 50 %, the lack of a coordinating and monitoring structure for a long time<sup>85</sup>, as well as

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83 Adopted by Decision of the Council of Ministers No. 296 of 6.5.2005 "On the adoption of the National Action Plan of the National Strategy of Migration"

84 Report on the implementation of the National Action Plan for Migration, European Institute of Tirana, December 2006.

85 The Minister of Labour, Social Issues and Equal Opportunities was appointed by Decision of Council of Ministers No. 425 of 11.7.2007 to coordinate and monitor its work.

other typical flaws of strategic planning in Albania related to failure to provide for financial support.

## **6.2.2 Migration**

Addressing the causes of migration of Albanian citizens towards the EU Member States certainly belongs to a long process that goes beyond measures identified in strategic plans concerning migration only. For this reason regularizing migration flows should be thought of as a major and more coordinated effort related to the economical and social development of the country. However, a preliminary measure should be the development of a legal framework on migration. In that regard Law no.9034 of 20.03.2003 “On Migration of Albanian Citizens for Employment Purposes” (Migration Law) has been adopted. This law regulates the right to employment and self-employment abroad.

Also, there have been continuous efforts to frame flows of migrants in bilateral agreements of seasonal employment. In fact, it is the SAA itself that enables framing migratory flows in bilateral agreements. Up to now agreements with Greece, Germany and Italy have been signed. However, it is interesting to note that the level of implementation has been very poor, questioning the seriousness of such initiatives.

The agreement with Greece provides that in cases of seasonal employment and in compliance with the needs of domestic job markets the parties inform each other about shortages in their work force and work force available to fill vacancies of the other party. This agreements, however, has never worked.

The agreement with Germany was signed on 11 December 1991 and its implementation started in February 1992. 496 persons, who were selected by a joint Albanian German committee, have found employment throughout the years of the implementation of this agreement mainly in hotels, as cooks and other professions. Unfortunately this agreement was operative until 1995 and at present is not.

The agreement with Italy concerning seasonal employment was signed on 18 November 1997 and provides that it will be implemented upon requests received by the Ministry of Labour of the Republic of Italy, which according to Italian legislation is the authority that deals with the selection and the distribution of lists of selected employees to the regional labour offices or the relevant police offices. This agreement is also not operative anymore. However, in general the Italian Government determines entrance quotas for migrants that want to work in Italy. In that framework, a certain employment quota is offered to Albanian citizens.

The fact that none of these agreements is operative should make the Albanian Government reflect on how to address the causes of failure to implement them. Among the main causes we can mention: failure of the Albanian offer to meet the demand of the foreign party for employees qualified in different areas; the bulk of bureaucracy in connection with processes of movement; and the uncertainty concerning the return of seasonal employees after expiry of their permits. Providing for measures in favour of the return of immigrants to Albania would have an impact on raising the credibility of these agreements and would enable their replication in connection with other countries. On the other hand the normal operation of these agreements will have a double positive effect for the country as it will keep migration income and qualified work force in the country.

A necessary means for controlling migratory flows is the registration of migrants in a special registry. According to the Migration Law, the MLSIEO keeps a special registry for migrants, which is structured in sections and is located at the Sector of Migration and Work Relationships of the National Labour Service. As of now there is no mechanism for binding those leaving the country to register. Thus, registration fully depends on the free will of people. It is necessary to make this registration obligatory for persons working abroad as the only way to have accurate statistics on migration on the basis of which migratory trends and flows can be analysed and studied. A regular functioning of this register would have a positive effect on the improvement of the Civil Status Registry, which is closely related to problems of the infrastructure of elections.



Opening private employment agencies has been of help to the employment in and out of the country. As of now fifteen private employment agencies have been granted licenses of which only four or five of them are actually working normally. The rate of successful requests is low compared to the total rate of requests and the need for employment in general. These agencies should be stimulated, so that their contribution in the labour market is more significant and that they assist state bodies in the area of employment.

### **6.2.3 Immigration**

Despite of being of a lesser importance than migration, the Albanian Government has dedicated an increasing attention to the application of rules concerning employment of foreign citizens in Albania and other security related issues.

The main competencies in relation with immigration are shared between the Ministry of Interior (MI) and the MLSIEO. The first is responsible for issuing, renewing and cancelling residence permits, which are the basic documents for further application for employment and establishment of different activities. While the MLSIEO is responsible for designing employment policies for foreigners and issuing work permits. The State Labour Inspectorate inspects the work of immigrants and is also responsible for issues of discrimination.

Other aspects of processing requests of foreigners are dealt with by other institutions such the Ministry of Foreign Affairs, the State Labour Inspectorate, the National Labour Service. With an increasing number of requests the need for further inter-institutional cooperation and simplification of procedures will become more obvious. These measures will have an effect on the decrease of costs of the service and on the increase of the availability of foreign persons to register.

However, the main challenge for meeting the standards in the area of immigration remains the incorporation of international standards in the domestic legislation. Albania has ratified up to day a major part of

the conventions of the International Labour Organisation. Adhering to these conventions, which are part of the European legislation, and the adoption of other legal acts and subordinate legislation in the area and implementing them will enable the alignment of Albanian standards to those of the EU.

### **6.3 Readmission Policies**

Readmission Agreements are concluded between two or more states, which commit themselves that, in accordance with the agreed procedures, will identify and safely return persons that do not meet the conditions for residing legally in the territory of one of the parties. These persons may be citizens of the state parties or of third countries who have transited illegally in the territories of the parties. These agreements determine procedures for the protection of human rights, recognition and application of joint standards in all phases of readmission, mutual recognition of decisions, provision of technical facilities and increased coordination and cooperation among them.

Starting in 1998 and after that in the beginning of 2000, Albania has signed a series of such agreements with most of the European countries, which have had substantial flows of irregular immigrants from Albania. Agreements with Italy, Hungary, Germany, the United Kingdom, Switzerland, Bulgaria, Romania and the Former Yugoslav Republic of Macedonia can be mentioned here.

Practice shows however that the degree of implementation of these agreements is different for different countries. For example Hungary, Germany, the United Kingdom and Switzerland apply regularly the provisions and obligations arising from these agreements, by giving notice to the contact point of the Directorate of Border Police and Migration before returning Albanian citizens. Other countries such as Italy and Macedonia return Albanian citizens without observing the notification procedures.

The Albanian Government is in the process of identification and negotiation with other European countries and countries whose

nationals use Albania as a transit route to enter illegally to the EU. At present, Albania is negotiating readmission agreements with the Czech Republic, Slovenia, Slovakia, Poland, Turkey, Latvia, Moldova and Bosnia and Herzegovina.

The main institutions responsible for the implementation of readmission agreements are: the Directorate of Migration and Readmission at the centre, which coordinates the entire process of implementation of such agreements, and the Police Stations at the border crossing points, which keep record of the persons returned and make their verifications. The present staff is composed of 3 persons at the Sector of Readmission and Return and 30 persons in total in all border crossing points.

### **6.3.1 Readmission Agreement with the European Community**

Since the 1999 Tampere European Council, the EU policy vis-à-vis third country has a condition concerning the conclusion of readmission agreements with the EC together with bilateral agreements with EU Members States. Furthermore, the Stabilization and Association Agreement with Albania and the following agreements that the EU offered to Serbia, Montenegro and Bosnia and Herzegovina provide for readmission agreements.

The constant migratory flows from Albania, the repetition in 1997 of a massive migration similar to that of the '90s as well as the instable situation in the region because of wars in the former Yugoslavia, showed an Albania where illegal migration movements depart towards the Community space.

Based on criteria such as geographical position, closeness to the EU, the pressure of migration on the EU, the existing framework of cooperation, the approach taken on migration issues, the General Council of the EU identified Albania together with a group of other countries including Russia, China, Turkey and Ukraine as resource or transit countries of illegal migration. Such identification of Albania and later on the inclusion of a provision concerning readmission agreement in the SAA were

followed by the signature of the Readmission Agreement between Albania and the EC on 14 April 2005.

With the entry into force of this agreement it was suggested to Albania to create and strengthen the structures that would deal with its implementation in order to cope with an increasing number of readmissions. Nevertheless the weakest point of implementation of the Readmission Agreement with the EC remains the creation and strengthening of administrative capacities. The State Police structure that is responsible for readmission issues, until April 2007 when it was restructured, was the Sector of Treatment of Foreigners and of Migration of the Directorate of Border Police and Migration, which had a staff of only three persons.

The Directorate of Migration and Readmission was created with the new structure of the State Police. The Sector of Readmission and Return comes under this directorate, which needs to be filled soon with qualified and appropriate staff to fulfill the obligations deriving from the Readmission Agreement.

Police officers at the border crossing points do not have a special education on readmission. Instead they have been recruited on the basis of the general criteria of age, professional skills and moral integrity criteria that should be met to be employees of the State Police. Training that is organised frequently for these employees has had little result because of their transfer to other positions within the State Police. Failure to ensure stability of the staff in positions for which they have been trained results in a lasting need for basic training and a failure to build experience in the area.

The Law on the State Police adopted in June 2007 provides for the first time specifically for taking a special course before admission to duty and also for continuing in duty for at least 3 years for the employees of the Directorate of Migration and Readmission. Even though training is a positive step it has a limited coverage only with respect to employees in the centre and not in basic levels.

With the entry into force of the provisions of the Readmission Agreement with the EC in May 2008 concerning readmission of citizens of third countries, the implementation capacity of institutions will seriously be tested. Some of the citizens of third countries readmitted in Albania have encountered great difficulties in returning to their countries of origin. Failure to provide for the funds in the budget for cases of return has resulted in keeping different persons in hosting centres for long periods of time and in an artificial increase of people in these centres.

The case of the citizens from India is significant. Despite their wish to return as quickly as possible, expressed even by hunger strike, they remained blocked for months in the reception centres. Their escape from the reception centres and the following action of the Ministry of Interior for capturing them was the consequence of a long waiting to return to their country. Other cases have had consequences for public security. The case of the Turkish citizen, who was sent off to his country by the Albanian authorities unattended by police supervision and who during the flight by threatening the pilot changed the plane destination is still alive in the memory of the Albanian public.

The specific geographical position of Albania, the easiness with which foreign citizens can enter the country and the lack of readmission agreements with some of the countries of origin of illegal immigrants risk to transform Albania into the prey of the so called “readmission trap” increasing the pressure in its borders with the EU and stimulate illegal trafficking of human beings.

The establishment of a closed centre for irregular immigrant from third countries in the village Kareç, Vorë with a capacity of 150 places constitutes a preventive measure aimed at avoiding “the readmission trap”. However, the readmission of other persons beyond this number will be very difficult and may cast doubts over full implementation of the agreement.

During the negotiations of bilateral readmission agreements with other Member States of the EU (as mentioned above Latvia, Slovenia and Poland) the Albanian authorities should pay attention particularly to

observe the priority that the provisions of the Readmission Agreement with the EC should have over the other bilateral agreements. In that framework, it is necessary to create the Readmission Committee as the supervisory authority of the Readmission Agreement since every future readmission agreement or protocol of implementation thereof should be notified to this Committee and only after this notification the agreement can enter into force. A failure to constitute this Committee can be a barrier in the future for a proper implementation of these agreements.

Some of the measures that should be taken in order to implement correctly the readmission agreements are: strengthening of special readmission structures and staff, providing for special funds in the state budget for returning foreign citizens to their country of origin and for escorting them, and the establishment of the Joint Readmission Committee as part of the Readmission Agreement with the EC.

## **6.4 Integrated Border Management**

In contrast to a simplistic view according to which the border has to do only with police or customs control, the concept of integrated border management includes coordination and cooperation of all authorities and agencies that are involved in border security and trade facilitation, so that the common goal of open, controlled and secured borders can be achieved.

This concept was defined in the European Commission Guidelines for Integrated Border Management in the Western Balkans. These guidelines are the basis for implementing activities of integrated border management in the Western Balkan countries. Integrated Border Management entails cooperation at three levels: within the service, among agencies and cooperation at the international level. The countries that should adopt this concept should gradually achieve such cooperation starting with the first level and going up to the third level.

In that context, the Albanian Government has adopted the National Strategy for Integrated Border Management<sup>86</sup>. Activities aimed at implementing this strategy are financed to a considerable extent by the EU assistance programme CARDS.

The main state agencies that operate at the border and that are required to cooperate in their work are: the Border and Migration Police (BMP); the Customs Service; the Phytosanitary Police and the Veterinary Service. Both the Albanian Government and foreign assistance should focus mainly on the first two because of the importance that border control and security through the BMP has and because of the weight that money collected by the Customs Service has in the state budget.

As to the other two services it should be said that there are serious gaps in the fulfillment of their duties. First these services are not present in all border points and there are serious gaps in communication between them. In absence of a central information system and a data bank, communication is carried out by mail. Furthermore, there is overlap and ambiguity with respect to division of competences and a lack of attention by Albanian institutions on these structures.

On the other hand the effectiveness of the BMP work is rather limited. Because of relations between different structures of the State Police, the BMP is not allowed to handle and control material and financial resources in a direct way. These resources are managed by the Directorates of Regional Police. Frequent structural changes, transfers and gaps in the process of selection of staff have weakened this structure to a considerable extent.

Training of BMP officers is also not effective. If we aim at carrying out sustainable reforms it is important that they start with professional enhancement. The Police Academy, which is the institution responsible for recruitment, training and re-training of the BMP staff, offers only 8 training classes on issues of border policing during the three year

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<sup>86</sup> Adopted by Decision of the Council of Ministers no. 668 of 29.09.2007 "The National Crosscutting Strategy on the Integrated Border Management" and its Action Plan.

basic training. This training program is mainly theoretical leaving future officers with no practical skills to cope with challenges related to integrated border management. Except for this the Police Academy does not ensure specialized training or continuous training for the BMP officers.

Despite the fact that the law on the State Police adopted recently provides for independence in managing financial resources, facilitated chain of command and hierarchy and a more clear division of the BMP from the State Police, the financial dependence of the BMP has not undergone substantial changes. The Directorate of Border and Migration does not have its budget line and has only a proposing role in financial and structural planning of the BMP. It is the General Director of the State Police that has the legal authority to manage the allocations from the state budget and other funding.

#### **6.4.1 Civilian control of state borders**

Albania was among the first countries of the Western Balkans that in 2000 transferred the responsibility for controlling the green border from military structures to civilian structures. A criterion that should be met without exceptions in order to fully achieve a civilian border control is the transfer of military command of the Coast Guard under civilian direction. This obligation derives from the decisions of the Ohrid Conference on Border Security, according to which all countries of the region commit themselves to ensure a civilian control of all agencies that work for the control and supervision of sea borders.

The legal initiative that regulates this aspect was adopted on July by the Assembly of Albania<sup>87</sup>. This law determines that the Marine Inter-institutional Operational Centre (MIOC) directs operations of the Coastal Guard. The MIOC organizes, performs and leads all marine operations aimed at controlling the implementation in the sea of national and international legislation while making full use of all operational

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<sup>87</sup> Law no. 9788 of 19.07.2007 "On some changes and addenda to Law no. 8875 of 04.04.2002 "On the Coastal Guard of Albania".



capacities of state institutions. With the adoption of this law and the establishment and functioning of the MIOC the principle of civilian command of coastal guard is ensured.

#### **6.4.2 System of Information Technology**

One of the components of the internal system of communication of the State Police TIMS that is related specifically to information on border control is the BCIS (Border Control Information System). TIMS is installed and presently functional at the 13 most important border crossing points out of a total of 26 in Albania. Four other points are still in the testing process. The system is connected to the centre in the General Directorate of the State Police and enables the registration of Albanian and foreign citizens at their entrance and exit, the registration of vehicles at their entrance and exit, the control of persons being searched for, the control of documents, the control of vehicles being searched for, the registration of events of relevance, the access to INTERPOL data, the producing of statistics in connection with all activities registered under TIMS and it also ensures internet, intranet and telephone connection.

The database of this system refreshes every 20 minutes. The installation of this information system in all border points will enable a full border control (entrances and exits) in real time and will ultimately make unusable the paper registers filled in handwriting by border officers. Another IT system used at border crossing points is ASYCUDA++. This system used by the customs administration is installed in 12 customs points. All of them are connected with the General Directorate of Customs, where all customs data are stored and processed.

Some of the measures that should be taken in order to improve the standards in the area of integrated border management are: infrastructural improvements at the border crossing points to ensure a normal work; staff training at all border crossing points and providing incentives for stability in the service; extending the TIMS system to border crossing points as soon as possible; increased attention to phytosanitary and

veterinary services; determination of special selection criteria for the BMP staff.

## **6.5 Security of Documents**

Security of documents is the most problematic issue and the least addressed in practice by the Albanian Government. This issue is analysed in two respects below, identification documents and their general security.

### **6.5.1 Identification documents**

The issuance of identification cards to Albanian citizens is a problem carrying over for years and has become a saga appearing in the public scene mostly on the eve of some electoral campaign for parliamentary or local elections. This has overshadowed the multidimensional importance of issuing identification cards to citizens in a proper manner. Issuing identification cards to Albanian citizens, creating a digitalised national registry and adjusting the addresses system to the dynamics of developments have been and continue to remain broken promises.

Producing identity cards with high security elements may have an effect on shortening the list of additional documents that are required by diplomatic presences of the Schengen countries in Tirana<sup>88</sup>. While the Albanian passport ensures an acceptable level of security the practices of issuing passports to Albanian citizens without a personal appearance in front of police offices or Albania consulates is worrisome<sup>89</sup>.

In such a situation, it can be presumed that there is a possibility for changing and counterfeiting first or last names in the civil status offices,

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88 Interview with Mrs. Janet P.C. Meijlis, Counsel of the Embassy of the Netherlands in Albania on June 1, 2007.

89 Albanian legislation provides for the duty of each citizen to be present at police offices or consulate offices abroad. Practice shows that in some cases such requirements are not met and the image of Albania and the level of security of Albanian documents are seriously put at risk.

especially in communes. Change of first and last names increases the chances that persons listed in the “wanted lists” of the EU Member States escape criminal charges.

In 2004, the Albanian Government approved the security elements and the form of the identity document but this initiative was not brought to a head. On 27 April 2007 the Albanian Government adopted a decision concerning security elements, form and model of identity cards of Albanian citizens. Production and distribution of identity cards will be done without creating a national digitalized registry as necessary for this complex undertaking. This decision does not determine the authority that will guarantee the process of obtaining and storing personal data of the Albanian citizens. Thus personal data protection is seriously put into question.

It is exactly the inclusion of biometric elements in identification documents without creating a special institutional authority and supporting infrastructure that can result in practice in a deprivation from the possibility to rectify biometric data. An eventual confusion of such data may have unanticipated and irreparable effects for individuals in connection with criminal processes.

At the moment two main projects are being carried out with the assistance of the OSCE. It is expected that these projects will provide solutions to change the actual state in which the civil registry system, responsible for issuing identification documents stands. The project of modernisation of the civil status service entails the creation of the National Registry of Civil Status and the Address System. The second project deals with the production and distribution of identity cards to Albanian citizens.

The implementation of these projects requires a total review of the basic legislation including the law on the civil status, the law on identity numbers, the law on identity cards and other decisions of the Government that relate directly or make the progress of these projects conditional. But legislative changes are only one side of the coin. The technical and organisational aspects of registration in the field and

the creation of a database are more problematic. These processes are expensive and require a lot of time to be fully completed.

It was foreseen that the said projects would be accomplished within September 2006. However, in reality work started only in March 2007, with the disbursement from the state budget of a 2 million Euros special fund for identity cards. This fund cannot cover the whole project of modernisation of the civil status service. Thus, there is a risk that the issuance of identity cards may not be based on accurate and conclusive data.

For this purpose the Albanian Government changed the implementation method by giving by concession the production of the identity card and the new biometric passport. The deadline set by the Albanian Government was the end of 2008. But after the publication in international media of the concessionary documents in November 2007 and the selection of the winning company in the following months the new deadline is set to April or May 2009. This means one or two months before the parliamentary elections should be held in according to constitutional deadlines. Delays, which unfortunately have become the reality of this project, justify every skepticism as to whether this will be the ultimate time limit.

After a long time of lack of legislative and financial developments in connection with the project on the modernisation of the civil status service, there have been few positive developments after the approval of the project<sup>90</sup>. If works continues at such pace it is likely that the production and distribution of identity cards will be completed before the National Registry of Civil Status and the Address System are in place. Such a situation would undermine the credibility of the identity card making it only a “plastic certificate”, a problem that needs to be addressed by the Government as being the main goal of the project.

Besides significant financial losses and reduction of credibility of Albanian institutions before European and international partners, the

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90 Decision of the Council of Ministers of 04.09.2007 “On the modernization of the Civil Registry System”.

negative effects of such an identification document would extend to the normality of election processes, which have always been contested on that regard.

## **6.5.2 Documents' control at Border Crossing Points**

As to security of documents at the border crossing points an improved situation in connection with the logistics and training of persons responsible for checking documents can be seen. In four border crossing points, the most important ones in terms of persons and vehicles flow, laboratories for analysing documents have been installed. They do the final examination of such documents. All border crossing points have basic equipment for examining documents and in some of them the means necessary for a more profound examination (small laboratories) are available.

Another important development is the production and distribution of the new passport that will be equipped with an electronic chip, which will contain a person's data. This process is still in the stage of deciding the final passport model. The financial costs have not been calculated yet but it is foreseen that they will be much higher than those of the current passport because of the technology that is used, the electronic reading systems that need to be installed and staff training.

Some of the reforms that should be taken in connection with the reform of the civil registry and the issuance of high security identification documents to Albanian citizens include: coherent coordination of all components of production and distribution of identity cards; data collection and their placement in identification documents in compliance with the SAA obligations concerning personal data protection; modernisation of the civil registry and production of identity cards as an integral part of the reform as well as extending the TIMS to all border crossing points as soon as possible.



## **7 TOWARDS A GENUINE CONDITIONALITY**

It is clear that the current situation of the visa regime brings into light some key elements that need to be addressed in a systematic way by Albania and the EU in order to achieve the ultimate goal: the lifting of the visa regime.

Visa Facilitation Agreement cannot be a sustainable solution capable of satisfying the aspirations of Albanians to move freely to the Schengen area. It fails to address the essentials of the causes that resulted in a high scale of refusal of Schengen visas. Nevertheless, this agreement should be seen as the first test for building the mutual trust, which primarily can be built by means of a two-sided willingness to respect the commitments agreed in the 2003 Thessaloniki Summit.

The failure of the EU to offer sufficient instruments, which would enable lifting of the visa regime with the Western Balkan countries, goes hand in hand with the lack of vision and willingness of these countries to work in parallel, in order to lift the visa regime among them. Albania, especially, should adopt a more strategic approach to ensure free movement of Albanian citizens through creating a symmetrical system of benefits. Increased exchanges among the countries of the region constitute a precondition to benefit from the opportunities offered by CEFTA, the unified free trade agreement, which centers exactly on the free movement of services.

The Albanian Government should focus on an ambitious agenda of tangible reforms, the accomplishment of which would enable movement to the Schengen positive list. Reforms should be accompanied with information campaign in order for the expectations of Albanian citizens be realistic, explaining the opportunities offered by the Visa Facilitation Agreement and the path that the country has to follow to lift the visa regime with the EU. At the same time, the public support for reforms that need to be taken to achieve this objective can be properly ensured. Making such objective public is always risky because there is a chance of failure. However, if the Albanian Government does not do this, the objective may never be attained.

Moving to the positive Schengen list can be achieved through amending Council Regulation (EC) 539/2001, which determines the countries that are part of the positive and negative Schengen lists. Thus, the lifting of the visa regime besides being a matter of meeting the standards, becomes also a matter of bargaining in connection with which foreign policy assumes its classical role. For this reason, an active diplomacy with the EU Member States is needed. One that provides continuous information about Albania, contacts the right people (“connectors”) and works continuously to improve the image of the country, because at the end of the day the decision to move to the positive Schengen list is taken in the Council where Member States sit.

The willingness of the European Commission, spelled out in the 2007-2008 Enlargement Strategy, to start a dialogue for lifting the visa regime with the Western Balkan countries based on individual merits, needs to be made more concrete, in order to avoid falling into the trap of an endless dialogue of which none would see any benefit.

Taking into consideration the precedent of Romania, the most realistic scenario that the EU could apply for Albania and the Western Balkan countries is to put them *en bloc* immediately on the positive list of Schengen, as a political signal with asterix and to spell out what conditions need to be met with clear deadlines. Applying asterix rule means in practical terms, to allow the European Commission to determine certain criteria and standards on the basis of which the EU could evaluate the progress of the Western Balkan countries.

Moving to the positive list of Schengen could be effective only in cases when the criteria spelled out clearly by the EU in asterix are met by the determined deadlines. If these deadlines are not met then the EU should reserve itself the right to restore the previous state of affairs.

The conditionality approach with respect to an effective move to the positive Schengen list should be accompanied by a defined regular evaluation process of the European Commission, for the areas related to the visa policy. This process should be separate from the annual reports that analyses the progress of the country in terms of accession process to the EU.



This approach could help EU itself in showing a genuine conditionality in this process in connection with which the expectations of Albanians are high. At the same time, it would increase EU's leverage being construed as clear message to Albanian citizens that lifting of the visa regime depends on the willingness of the Albanian Government to undertake reforms that are closely related to the visa policy.



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