




ISSN: 2617-6548

URL: www.ijirss.com



Access of foreigners to the Albanian labor market: Legal aspects

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Abstract

The authors deal with the right of foreign workers to access the Albanian labor market, particularly the legal framework, the administrative procedures, and some technical rules concerning work permits and sanctions as well. This article also highlights the rules governing the general conditions, the sanctions for illegal participation in the labor market, and legal remedies. Albania has implemented new legislation to improve its alignment with the standards of EU legislation and to be well prepared for its eventual accession. This (long) process has driven the Republic of Albania to further improve its legislation and policy framework for migration. Albania is considered a typical migrant-sending country. Emigration continues to this day, mainly for economic and social reasons, though policies within the EU may be slowing down. Albania today has a complete legal framework on migrants. This country has attracted a small number of foreign workers due to scarce immigration. In recent years, the picture remains the same. Indeed, many reports and studies deal with the migration and integration of Albanian citizens all over the world, while minimum studies deal with the legal status and integration of foreigners (workers) in Albania.

Keywords: Foreigners, Labor market, Legal remedies, Sanctions, Work permits.

DOI: 10.53894/ijirss.v8i3.7425

Funding: This study received no specific financial support.

History: Received: 3 April 2025 / **Revised:** 8 May 2025 / **Accepted:** 10 May 2025 / **Published:** 28 May 2025

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Competing Interests: The authors declare that they have no competing interests.

Authors' Contributions: Both authors contributed equally to the conception and design of the study. Both authors have read and agreed to the published version of the manuscript.

Transparency: The authors confirm that the manuscript is an honest, accurate, and transparent account of the study; that no vital features of the study have been omitted; and that any discrepancies from the study as planned have been explained. This study followed all ethical practices during writing.

Publisher: Innovative Research Publishing

1. Introduction

The European Union and the intention to join the EU are the main reasons why the dimension of labor migration policies in Albania has evolved [1]. On the other hand, the Albanian government has signed bilateral agreements with other countries to recruit and increase the number of foreign workers [2].

Albania is considered a typical migrant-sending country [3]. Emigration continues until today, mainly for economic and social reasons, though policies within the EU may be slowing down [4]. Labor migration in such countries is considered an economic and social phenomenon [5].

Albania today has a complete legal framework on migrants [6].

In recent years, the picture remains the same. Indeed, many reports and studies address the migration and integration of Albanian citizens worldwide, while minimal studies focus on the legal status and integration of foreigners (workers) in Albania.

In this paper, we will analyze the rights of foreign workers to access the Albanian labor market, particularly the legal framework, the administrative procedures, and some technical rules concerning work permits. A non-national who wishes to take up employment in the Republic of Albania must first obtain a business registration certificate or a registration document for legal employment.

Special attention will be paid to sanctions such as administrative and penal sanctions, expulsion, and removal as well.

Citizens of EU and Schengen countries are exempt from the provisions of the Albanian Law "On Foreigners" and enjoy the same rights as Albanian citizens in the fields of employment and self-employment. This is the reason why it is outside the scope of this paper.

2. Research Methodology

A few scholars have wrestled with migration issues. Most of them deal with emigrants from social aspects. This is obviously desk research combined with a set of various research methods.

We can mention here some recent studies in the field, in-depth analyses of all EU and national legal acts, some research reports, policy papers, strategies, and other relevant documents.

In March 2020, Albania began negotiations to access the EU and continues to transpose EU legal acts. The Republic of Albania has implemented all the EU directives in the field of migration.

In this context, of course, it is important to add to the list qualitative analyses of European legal documents and national laws on migration: analyses of information published on the websites of public institutions and other organizations and bodies, and in particular analyses of EU law, case law, and national legislation on the issues discussed in this paper.

Interviews with experts, institutions, policymakers, students, and researchers are the last category of methods used in this article.

3. Research Findings

3.1. Legal Framework

The Albanian Constitution includes strong guarantees for the respect of human rights and fundamental freedoms, not only for Albanians, but also for foreigners and stateless persons.¹ When regulating the rights of immigrants, the Albanian legislator must respect the principles of non-discrimination and equality before the law².

An immigrant can be deported only under conditions specified in law and the process must be transparent and respectful of the immigrant's rights in the Albanian Constitution. Collective expulsion of foreigners is expressly prohibited.³ Article 40 of the Albanian Constitution also provides that foreigners may find refuge in Albania according to the law. The right to employment is founded in the Albanian Constitution, more specifically in Article 49, which reads: "Everyone has the right to earn the means of living by lawful work that he has chosen or accepted himself." Everyone has the right to pursue a freely chosen occupation and to obtain a professional qualification [7]. This principle is phrased in gender neutral terms and thus applies to all citizens alike, both for men and women.

The principle of equal treatment found in Article 18 of the Constitution is developed in the Labor Code, where it stands as a fundamental right. According to Section 9 of the Labor Code, any form of discrimination is prohibited.

Measures taken by the Council of Ministers or in collective contracts designed to protect employees, as provided in the Labour Code are also not considered to amount to discrimination⁴.

Rules governing the access of non-nationals to the Albanian labour market (workers) are found in the Albanian Law No. 108/2013 "On Foreigners" dated 28 March 2013 as amended by Law No. 74/2016 dated 14.07.2016⁵.

Law No. 108/2013, as amended, regulates the regime for entry, stay, employment and departure of aliens. Title V of the Law "On Foreigners" provides the general conditions when non-nationals can take up employment, the situation regarding the labour market in Albania and the issuing of work permits.

European Union citizens and those of Schengen countries are exempted from the provisions in paragraph 1 of Article 71 of the Law "On Foreigners". They enjoy the same rights as Albanian citizens as regard employment and self-employment⁶.

Law No.71 dated 7 July 2016, entitled "On Border Control," regulates the control and surveillance of the State border [3]. The Law is aligned to EU Regulation 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code)⁷.

Border control and surveillance are a power of the Albanian Ministry of Interior.

¹ See Article 16 of the Constitution of the Republic of Albania.

² See Articles 17 and 18 of the Constitution.

³ See Article 39 of the Constitution of the Republic of Albania.

⁴ Law No. 10221, 4 February 2010, "On Protection from Discrimination".

⁵ These amendments were published in Official Gazette No.146 and entered into force on 20 August 2016.

⁶ See Article 71 par.9 of the Law "On Foreigners".

⁷ OJ EC 2016, L 77/1.

Regarding the access of non-nationals as self-employed to the labour market, other rules should be considered. Albania has a Civil law system like that in most other Continental European Countries. It has enacted legislation with respect to property and contract rights. Because Albania does not have a Commercial Code, relevant rules on these issues are found, among others, in the Foreign Investment Law;⁸ The Commercial Companies Law⁹; the Bankruptcy Law¹⁰; the Employment Law;¹¹ The Taxation Procedures Law¹²; the Banking Law¹³ and the Concession Law¹⁴.

Labour legislation, on the other hand, in particular the Albanian Code of Labour [8] and other laws in force¹⁵ include special provisions regarding an employer's obligations to inform the authorities and the elected representatives in the workplace and to negotiate with the staff when the use of labour not already employed by the company is envisaged [8].

Foreign investment enterprises registered in Albania as legal entities are allowed to own every type of land, and companies investing in Albania have the right to employ foreign citizens. The most common type of organization for foreign investors is a limited liability company. The Law on Commercial Companies provides guidelines on the activities of companies and the legal structure under which they operate.

Other forms of business entities include joint-stock companies, joint ventures, unlimited partnerships, limited partnerships, and sole proprietorships.

Employment relations are regulated by individual employment contracts under the Labor Code. The National Council of Labor, composed of government officials, trade unions, and employers' associations, aims to improve social dialogue between the government, management, and employees [9].

3.2. Conditions for Entitlement to Work in the Country as an Employment Person. Administrative Rules and Procedures

According to Article 71 of the Law "On Foreigners," a non-national may take up employment in the Republic of Albania once a work permit or a business registration certificate has been issued, unless otherwise provided for by that Law, by an international agreement, or in a decision of the Council of Ministers.

Any action that must be taken to establish a business or provide a service in Albania is not classed as work.

An application for a work permit can be made by a non-national with lawful residence in the Republic of Albania or by the employer. The employer is only entitled to apply for a work permit after a four-week period following the publication of the job vacancy and in accordance with Article 83 of the Law "On Foreigners" [3].

The processing of an application for and the issuing of a work permit, when the criteria set out in the law are satisfied, is completed within 30 days from the date the application was made. An employer cannot employ a person who is not staying lawfully in the Republic of Albania. An employer who hires a non-national must notify this to the relevant employment office and the regional authorities responsible for border and migration within eight days after the non-national starts work.

The criteria, procedures, and documentation for the issuing of work permits and certificates of registration are found in several decisions of the Council of the Ministers¹⁶.

Article 72 of the Law "On Foreigners" provides an exemption from the obligation to apply for a work permit or a registration certificate.

A work permit or business registration certificate is not required for nationals of EU member states and Schengen countries.

EU citizens and nationals of Schengen countries are entitled to take up employment under the same conditions as Albanian citizens, unless the law provides that the envisaged employment is specifically reserved for those holding Albanian citizenship. Their intention to take up employment is communicated to the competent employment office, i.e., the one where the activity will be carried out by the employer, the self-employed person, or the investor.

An annual quota for the employment of non-nationals in the Republic of Albania is set until the first of October of each year, as provided for in Article 82 of the Law "On Foreigners." The Ministry of Labor, in collaboration with the Ministry of Economy and in consultation with the central State institutions responsible for employment, proposes an annual quota for the employment of non-nationals, which is then approved by a decision of the Council of Ministers. The annual quota for the employment of non-nationals is determined in accordance with migration and the labor market in Albania.

The decision setting the annual quota for the employment of non-nationals also defines the activities and occupations in which work is permitted, as well as the number of work permits that can be issued for the different activities and occupations. The annual quota for the employment of non-nationals can include a quota for seasonal employment. The procedure for this institutional and inter-institutional cooperation to prepare the annual employment quota is approved by joint instructions of the Ministry of Labor and the Ministry of Economy.

Work permits may be issued in addition to the annual quota for the employment of non-nationals who are daily immigrant workers on the basis of bilateral agreements or to staff holding key positions in companies, branches, and representative

⁸ Law No. 7764/1993, 2 November 1993, "On Foreign Investments" amended by Law No. 10316, 16 September 2010 and Law No. 46/2017, 13 April 2017.

⁹ Law No. 9901 "On Entrepreneurs and Commercial Companies", entry into force: 14 April 2008.

¹⁰ Law No. 8901, 23 May 2002, "On Bankruptcy" (amended in May 2008). This Law is similar in organization to the German Bankruptcy Law.

¹¹ Law No. 7961, 12 July 1995.

¹² Law No. 9769 / 2007 on Some Amendments to Law No. 8977, 12 December 2002 "On the Taxation System in the Republic of Albania" (amended).

¹³ Law No.8365/1998,2 July 1998 "On Banks in the Republic of Albania".

¹⁴ Law No.77/2015, 27 July 2015 "On Amendments and Additions to Law No.125/2013 "On Concessions and Public Private Partnerships".

¹⁵ See, for example: Law No. 7995/1995, dated 20.09.1995 "On employment promotion".

¹⁶ See, for example: Decision No. 362, 1 April 2009 of the Council of Ministers, "On defining the criteria, procedures and documentation for entry, stay and treatment of foreigners in the Republic of Albania"; Decision No. 470, 06 May 2009 of the Council of Ministers, "On approval of the model, technical specifications and format of travel documents for foreigners"; Decision No. 469, 6 May 2009 of the Council of Ministers, "On the documentation of security elements for final approval and model residence permit for foreign nationals"; Decision No. 66/2014, 12 January 2014 of the Council of Ministers, "On determination of the requirements, documentation and procedures for the obtainment, refusal and cancellation of the work permit for the highly skilled professionals of the individuals of the type A/KL. Available on http://www.qbz.gov.al/botime/fletore_zyrtare/2014/PDF-2014/21-2014.pdf, 16 May 2018.

offices, as well as staff that is transferred within enterprises or companies as part of an internal transfer where there is an agreement or collaboration based on a cooperation programme; and to self-employed persons who manage their own company or who own more than 51 percent of the shares of the company.

The same status is enjoyed by language teachers and lecturers¹⁷.

An application for the worker's residence permit can be made either by the worker or by the employer.

When a foreigner has resided in Albania for an uninterrupted period of two years with a temporary residence permit granted based on employment, he/she may apply for a residence permit. Such a permit can be issued if the foreigner still meets the requirements for being granted a residence permit [7].

Citizens from countries outside the EU and the USA need a work permit to work in Albania. The 'worker's residence permit' is the only specific permit category in the Law "On Foreigners" in a separate Chapter.

Other residence permits are not classified into separate permits, but as one residence permit which can be issued on different grounds (i.e., family ties, humanitarian grounds, employment, etc.) [3].

A worker's residence permit doubles as a permit that gives its holder access to the Albanian labor market. There are several provisions in the Law "On Foreigners" dedicated to this permit. Many of the provisions on the worker's residence permit also apply to other categories of residence permits that can be granted on the grounds of employment.

The legal definition of the worker's residence permit is that it is a permit required for a foreigner to reside in Albania or on board an Albanian vessel if the foreigner intends to take part in gainful employment to which he/she would not have the right under another residence permit or without a residence permit. Gainful employment is understood to mean work in return for payment in an employment relationship in the private or public sector, or some other employment relationship. The type and duration of a residence permit for an employed person are determined by the employment contract [10]. If an employment contract is valid until further notice, even the first residence permit may be granted as a continuous permit unless residence is intended to be temporary.

A non-national who wishes to take up employment in the Republic of Albania must, first, obtain a business registration certificate or a registration document for legal employment¹⁸.

The criteria and procedures for obtaining a certificate of registration are set by a decision of the Council of Ministers, which also determines which documentation is required to establish that the conditions are satisfied.

The format and content of the certificate of registration are approved by a decision of the Minister of the Ministry of Youth and Social Welfare. There are several actors that assist employers; for instance, Business Albania, the Confederation of Employers' Organizations, the Albanian National Clothing Manufacturers, the Albanian Constructors Association, and the Union of Industrialists.

3.3. Conditions for Entitlement to Work in the Country as a Self-Employed. Administrative Rules and Procedures

When applying for a residence permit to conduct business activities in Albania, the permit category is the residence permit for a self-employed person. The criteria for eligibility for this permit are the profitability of the business activity and guaranteed means of support for the person concerned. In addition, the general professional and qualifications-related requirements relevant to the field of business must be satisfied [12].

The legislation regarding admission as a self-employed person, i.e., the business registration and licensing procedures, is in line with the EU standards and aims at reducing administrative barriers for businesses operating in Albania [9, 13]. Business entities operating in Albania should be registered at the National Commercial Register (NCR). Business entities that can be registered at the National Commercial Register (NCR) are the following: Sole Entrepreneurs; Unlimited Partnerships; Limited Partnerships; Limited Liability Companies; Joint Stock Companies, etc. [14].

The NCR is a central public institution with legal personality, reporting to the Minister responsible for the economy. Its legal seat is in Tirana. Registration in the Commercial Register is obligatory for natural persons exercising a commercial economic activity, simple partnerships provided for by the Civil Code, commercial companies, and any other entity subject to registration in accordance with Albanian law.

To register a new company with the National Registration Centre, the following documents are required.

1. Application form.
2. The Charter – The statute or the organization chart of the registered person.
3. Accompanying documents: ID Card and other relevant documents.

Foreigners who reside in Albania and have been issued a residence permit are also allowed to engage in business in Albania. The legal definition of a self-employed person is quite narrow, only including a person who is acting under his or her own unlimited business responsibility. A residence permit for a self-employed person is only issued if this definition is met and there is no other ground to reside in Albania [3].

There are many cases where the law imposes special conditions for different categories of self-employed persons, which also include foreigners.

¹⁷ See, in particular: Article 83 of the Law "On Foreigners".

¹⁸ A certificate of registration of unlimited duration is issued to the following non-nationals: Persons involved in missions of technical assistance with central institutions, independent institutions or institutions directly dependent of the aforementioned ones; Consultants or advisors to central State institutions, independent institutions or institutions directly dependent of the aforementioned ones who are employed under a government agreement or a project; Managers or staff of institutions, religious and charity foundations, non-profit organizations, which are recognized by and registered with the competent bodies the Republic of Albania who is not remunerated for their work; Civil and military officials who come to work in the Republic of Albania within the framework of an agreement between the government of the Republic of Albania and the government of the country they come from; Mass media representatives, reports of foreign correspondents accredit in the Republic of Albania, working for a foreign employer; and Lecturer or researcher or foreign specialists who come to the territory of the Republic of Albania within the framework of a bilateral governmental agreement or an agreement concluded between educational establishments [11].

Compliance with these rules is entrusted to the National Licensing Centre (NCL) [15] that started life as a central public administration, reporting to the Minister responsible for economic issues in June 2009. The NCL assesses compliance with licensing or permitting criteria based on the following information: an applicant's statement and documents issued by other public bodies or private institutions. In addition, it makes its own assessments, performs preliminary inspections and tests, and conducts contests, interviews, hearings, or any other adequate method.

Licenses and permits, and/or respective subcategories that fall under the competence of the NLC are divided into three groups: The first group includes those categories of subcategories that only require the applicant's statement to evaluate whether the criteria are satisfied.

The second group includes those categories or subcategories that require both the applicant's statement and proof in the form of documents to be submitted by the applicant for at least one of the criteria.

The third group includes those categories or subcategories for which the assessment of at least one of the criteria also requires an inspection, test, competition, interview, or any other assessment method.

3.4. Sanctions for Illegal Participation in the Labour Market

Like other countries, the Republic of Albania prohibits by law the employment of anyone who is illegally residing in its territory. Infringements of this prohibition are subject to the sanctions and measures laid down in Albanian legislation on migration and asylum, as well as under criminal law. The Albanian legislation provides for administrative sanctions and penal sanctions.

Administrative sanctions: Administrative sanctions have, as the term reveals, a sanctioning character. In the Republic of Albania, certain types of administrative sanctions can be imposed, but their scope of application is limited to specific areas of law. Chapter VI of the Law "On Foreigners" deals with the general conditions for the removal and expulsion of aliens in the territory of the Republic of Albania. As far as irregular immigration is concerned, two forms of administrative sanctions can be applied. Firstly, there are sanctions directed against employers using an illegal labor force. The second form of administrative sanctions concerns carriers. They have an important role in preventing irregular entry into the territory.

Penal sanctions: The legal basis for any criminal law measure, as is the case with the whole Albanian legislation, is the Constitution of the Republic of Albania. The other main source for criminal law obligations are international agreements, ratified by the Albanian government. The basic statute in Albanian criminal law is the Penal Code [15]. Besides the Penal Code, another source of criminal law is the Military Penal Code, approved by Law No. 8003 of 28 September 1995 [15]. Sanctions in the Penal Code are defined and especially the alternative sanctions. The general principle regarding sentencing states that the sentence shall be determined so that it is in just proportion to the harmfulness and dangerousness of the offence committed, the motives to commit the act and the culpability of the offender as manifested in the offence committed. The general forms of punishment are imprisonment and fine, but there are also other, additional penalties: for instance, community service [15].

3.4.1. Sanctions Imposed on Employers

According to Article 74 of the Law "On Foreigners," the employer who has been issued a work permit is obliged to notify the competent authorities of any changes to the terms under which it was issued, requesting their approval if the amendment relates to the name and address of the employer, the valid employment contract covering the period for which the work permit is issued, and all the activities that the person employed is authorized to undertake.

To prevent the employment of irregularly staying persons, employers are required, before they recruit a non-national, to verify whether that person has a valid residence permit or another authorization that is evidence of lawful stay in the Republic of Albania. This is also the case if the non-national is being recruited for the purpose of posting to another state in the context of the provision of services [16].

According to Article 77 of the Law "On Foreigners", a work permit may not be issued or renewed if, within the six months before submitting the request for a work permit, the employee for whom the working permit is intended has been released by the employer from duty for an indefinite period of time or has stipulated a contract that does not meet the requirements set out in Albanian legislation or international conventions on working and employment conditions. Likewise, if an employer does not provide the correct information and documents, if requested, a work permit will not be issued or renewed¹⁹. This means that employers need to receive all relevant information and documentation regarding the immigration status from their employees. Employers who have complied with the obligations set out in the afore mentioned provisions in the Law "On Foreigners" are not held liable for employing a person who is residing irregularly in Albania if the competent Albanian authority later finds out that the document presented by an employee has, in fact, been forged or misused, unless the employer knew that the document was a forgery.

The most important provisions in the Law "On Foreigners" concerning sanctions that can be imposed on employers are Articles 137-139 of the Law "On Foreigners". According to Article 137 of the Law "On Foreigners", the employer should, in any case, be required to pay any outstanding remuneration for the work an employee has performed for him/her, even if employment was irregular, as well as any outstanding taxes and social security contributions and an administrative fine. If the level of remuneration cannot be determined, it is assumed to be at least the wage provided for by the applicable laws on minimum wages, collective agreements, or practices in the relevant occupational branches. The employer can also be required to pay, where appropriate, any costs incurred to transmit outstanding remuneration to the country to which the irregularly

¹⁹ See: Article 77 par. c of the Law "On Foreigners".

employed person has been returned. If the employer does not take care of back payments, then Albania is not obliged to fulfill this obligation on behalf of the employer.

When irregular employment has been established, the regional authority responsible for border and migration is entitled to propose measures to be adopted against the employer to the responsible State institutions (in this case, the Directorate of the Ministry). Measures may include financial penalties and a contribution towards the costs of returning persons staying in Albania irregularly to a third country. The most important measures that can be taken against employers are the exclusion from the right to public benefits. It is also possible to close, either temporarily or permanently, the legal or natural person where the violation was committed²⁰.

To enforce the general prohibition and to deter infringements, Albanian law provides for appropriate sanctions. In some cases, such as repeated or knowingly hiring undocumented migrants or hiring children or victims of human trafficking, the employer is punished for having committed a criminal offense for which criminal law provides effective, proportionate, and dissuasive penalties. Employers who subject migrant workers to particularly exploitative working conditions are also punishable under criminal law. Subjecting a person to particularly exploitative working conditions is a criminal offense when committed intentionally, when it continues or is persistently repeated, or concerns the simultaneous employment of a significant number of irregularly employed persons. This is also the case if the offense is committed by an employer who hires workers from or uses the services of a person knowing that the persons performing the work or services are irregularly resident in Albania and a victim of human trafficking. There are special rules imposing sanctions for employers who employ minors irregularly.

3.4.2. Sanctions for Workers

Chapter XI of the Law “On Foreigners” addresses the sanctions in general that can be imposed on non-nationals who violate the law, particularly Articles 145 and 146 of the Law “On Foreigners”.

The most important sanction that can be imposed on workers who are irregular participants in the labor market is the cancellation of the work permit. This is stated by Article 80 of the Albanian Law “On Foreigners,” which allows the Albanian authorities to cancel a work permit before the deadline of its validity has expired.

In addition, the Inspectorate of Labor of the Ministry of Youth and Social Welfare has the right to cancel a work permit before the deadline of its validity has expired if a temporary residence permit is cancelled, or if the person for whom the work permit was issued has left the Republic of Albania for a continuous period of more than six months, unless deployed by the employer in another country, or has left the Republic of Albania to attend education or to follow vocational training, due to illness, babysitting, or compulsory military service, and if the alien performs work other than what the work permit was issued for, unless the work is done by somebody who has been issued a permanent work permit.

Within seven days after cancelling a work permit, the Inspectorate of Labour notifies the responsible authority for border and migration.

Violation of the rules in the Law “On Foreigners” is an administrative offence and the fine is imposed according to administrative offences legislation. It is punished with a fine ranging from 20,000 - 30,000 ALL²¹.

Expulsion and removal: Expulsion means that a person is required to leave the territory of Albania²². Albania has to respect the principle of *non-refoulement* in absolute terms, which constitutes, among others, an attempt to codify the relevant case-law of the European Court of Human Rights in regard to Article 3 ECHR. Removal and expulsion of a non-national on personal grounds is allowed if in accordance with the conditions in the Albanian Law “On Foreigners”. Chapter IV of this Law establishes the Albanian State’s prerogative to regulate entry to and expulsion from its territory of non-nationals. When executing this responsibility, the Albanian authorities must take into consideration the evolving case law of the Strasbourg court regarding the protection of those subject to an expulsion measure.

3.5. Sanctions Against the Irregular Exercise of Self-Employment

To detect migrants working in abusive conditions and irregular employment, a comprehensive legal framework has been established, which is composed of, amongst others, the new Law on Foreigners No. 108/2013, the National Action Plan on the Fight against Trafficking in Human Beings, and the Strategy on the Fight against Organized Crime, Trafficking, and Terrorism.

The National Strategy for Employment and Skills 2019-2022, approved by Decision of the Council of Ministers²³ has the overall objective to promote qualitative jobs and opportunities for developing skills for all Albanian males and females throughout their life cycle. The migration policy developed by, and services offered by the Ministry of Foreign Affairs include inter alia the improvement of the treatment of non-nationals in Albania by guaranteeing non-nationals rights upon their arrival to Albania; the cooperation with other institutions dealing with non-nationals; and the facilitation of their right to enter Albania by removing the obligation to apply for a seasonal visa and the improvement of the procedure for the issuing of visa.

The administrative sanctions in Chapter XI of Law No. 108/2013 can be imposed on carriers, state bodies, public legal entities, or natural persons who do not comply with the obligations arising from the provisions of that law, as well as on employers and employees who are unlawfully employed.

²⁰ See, in particular: Article 137 par. 4 of the Law “On Foreigners”.

²¹ See: Article 145 par. 1, point c of the Law “On Foreigners”.

²² An expulsion decision invalidates any existing leave to enter or to return. According to the Albanian immigration rules, entry clearance and leave to enter is refused to any person whose expulsion has been ordered. Revocation of an expulsion order does not, however, entitle the person concerned to re-enter Albanian territory. It merely renders him/her eligible to apply for admission to Albania under the Immigration Rules. Albanian citizens cannot be expelled or removed from the territory of the Republic of Albania.

²³ https://www.financa.gov.al/wp-content/uploads/2020/10/Publikim_EN_Strategjia-Komb%C3%ABtare-p%C3%ABr-Pun%C3%ABsim-dhe-Aft%C3%ABsi-2019-2022.pdf

The Penal Code was amended by Law No. 144/2013 to make internal trafficking in human beings a criminal offence and to make benefiting from or using the services provided by trafficked persons, as well as the exploitation of people who have been trafficked, punishable by law.²⁴

Regarding the principle of equal treatment of migrants in an irregular situation and the unlawful employment of a foreigner, Article 137 (1) (dh) and (e) and (2) of Law No. 108/2013 obliges the employer to pay the outstanding remuneration for any work performed and any taxes and social contributions relevant to the employment of a foreigner who has been irregularly employed over a six-month period, unless the employer can prove otherwise. Article 137(4) of Law No. 108/2013 provides measures that can be imposed on an employer who has employed a foreigner unlawfully staying in the territory of the Republic of Albania.

3.6. Legal Remedies and Procedural Safeguards

Investors in Albania are entitled to legal protection of their rights related to their investments. Employers and employees have the right to form trade unions (Labor Code, Article 176). Trade unions are organized at the national level (according to the industrial sector) and at the company level. The right to strike is found in the Labor Code. Trade unions have the right to negotiate.

Wages, working conditions, etc., and collective agreements apply to both union and non-union workers. Employment contracts can be for a limited or an unlimited period. As a rule, employment contracts are signed for an unlimited period if the duration is not specified properly in the contract.

The parties to a dispute may agree to submit disputes for consideration by an arbitration institution. In the event that the arbitration does not work, foreign investors have the right to submit a dispute to an Albanian court or to the Arbitration Court in Tirana. In the event of a dispute regarding discrimination, the transfers of assets, or the indirect expropriation of a foreign investment by the Government, the investor can submit the dispute to the International Centre for Settlement of Investments Disputes (ICSID). In Albania, ratified international agreements take legal preference over national legislation in matters relating to FDI.²⁵ According to the law, the central authority for assessing the economic benefit of an activity engaged in by a self-employed person is the Ministry of Economy.²⁶ It is not regulated who the competent authority is to conduct the economic benefit test, whether it must be done for a self-employed person by the Ministry of Economy, or upon request of the Ministry of Social Welfare and Youth.

How these ministries, both competent to issue work permits to self-employed persons and competent to perform the economic benefits test, which *sine qua non* for the granting of a work permit, have to cooperate as provided for by law.

There is no economic benefit test if a work permit is issued for self-employed persons in specific sectors of interest in Albania, in any region and for activities that will create employment opportunities in the country²⁷. The Albanian legislation provides improved appeal mechanisms against removal orders²⁸ and the expulsion²⁹ of foreigners.

It promotes the voluntary enforcement of a removal order where irregular foreigners are concerned³⁰. Article 110 of the Law "On Foreigners" provides for a right to appeal an expulsion order issued by the authority responsible for border and migration affairs, as provided for by law. Until the appeal proceeding is completed, the person appealing an expulsion decision has to be held in custody in accordance with the conditions that apply to alternative measures of supervision or detention in a closed centre, as provided for in an order that is issued specifically for this purpose.

4. Conclusions

In this paper, the authors deal with the issues of foreign workers accessing the Albanian labor market, the legal framework, the administrative procedures concerning work permits and sanctions against irregular employment, and legal remedies as well. The right of access to the labor market and those related to these issues enforce the legal status of foreigners in the Republic of Albania. Real integration, in our opinion, seems to be enforcing the legal status and guaranteeing the effectiveness of the enjoyment of the rights. Particularly, institutional capacities in addressing migrants' rights in Albania are limited. Although the Albanian Constitution includes strong guarantees for the respect of human rights and fundamental freedoms, the situation in this country does not seem to be good. Foreigners with residence permits in Albania, according to the reason for the application in the last year, are estimated to be 14,921, and 7,124 for employment reasons. The legal framework governing the access of foreigners to the Albanian labor market reflects the country's commitment to balancing economic growth, labor market needs, and international obligations. By implementing laws such as the Law on Foreigners and the Law on Employment Promotion, Albania has created a structured pathway for foreign nationals to integrate into the labor force, ensuring compliance with labor standards and fair treatment. Key strengths of the system include:

- Alignment with international conventions and EU directives, showcasing Albania's ambition to harmonize with global labor and human rights standards.

²⁴ ILO Migrant Workers and ILO Convention, 1975 (No. 143); *Albania*—Ratification, (CEACR) (2006) ILC Session (2014).

²⁵ 2012 Investment Climate Statement; Bureau of Economic and Business Affairs (US Embassy); June 2012.

²⁶ See: Article 4 of the Law "On Foreigners".

²⁷ This article does not apply to foreigners who have worked in Albania and have stayed there lawful for more than two years within a period of five years.

²⁸ Article 107 Law No. 108/2013.

²⁹ Article 110 Law No. 108/2013.

³⁰ Article 108 Law No. 108/2013.

- Provisions for equal treatment of foreign workers, promoting non-discrimination, and fostering social cohesion.
- Specific incentives for highly skilled professionals and investors aimed at addressing labor market gaps and encouraging innovation.

However, challenges persist, such as bureaucratic delays, language barriers, and recognition of foreign qualifications, which may hinder the efficient integration of foreign workers. Addressing these issues will require streamlined administrative processes, enhanced enforcement of labor protections, and robust support programs for integration. As Albania continues to evolve as a candidate for EU membership, fostering a dynamic and inclusive labor market for foreign nationals will be vital. This will not only support economic growth but also strengthen the country's position as a competitive and open destination for global talent. In 2023, Albania received 12,430 applications for residence permits, marking a 22.7% increase compared to 2022.³¹

This rise reflects Albania's growing appeal as a destination for foreign nationals seeking residence. The introduction of the Unique Permit in early 2023, which streamlines the process by combining work and residence permits, has likely contributed to this upward trend.³² This development simplifies the application process for eligible foreign nationals, making it more efficient to obtain authorization to work and reside in Albania.

In the final analysis, we stress that Albania should enforce the real integration of foreigners. Considering the ongoing debate regarding this issue, we must say that EU citizens enjoy, as mentioned, special treatment regarding the right to access the labor market and residence permits in Albania.

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³¹ <https://www.instat.gov.al/en/themes/demography-and-social-indicators/migration-and-migrant-integration/publications/2024/foreigners-in-albania-year-2023>

³² Albania introduces Single Permits and new Residence Permits for specific categories of foreign nationals https://www.ey.com/en_gl/technical/tax-alerts/albania-introduces-single-permits-and-new-residence-permits-for-specific-categories-of-foreign-nationals