

THE ALBANIAN POLICY AND LEGISLATION ON EMPLOYMENT OF FOREIGNERS: THE IMPACT IN THE INTERNAL LABOUR MARKET

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Abstract

While being a predominantly country of emigration, Albania is currently experiencing an increase in the number of foreigners employed in the country; a trend which deserves analyses for future planning and designing of employment policies: protectionist vs. liberalized approach. This will become particularly important in the eventuality of future accession, which is believed to be followed by a prompt increase of the number of immigrants/foreign workers in the country. The article analyzes the impact of the employment of foreigners in the Albanian Labor Market. It finds that the two essential tools in employment of foreigners, which aim at protection of internal labor market- namely labor market test and economic benefit test, in practice are difficult to be applied, thus leaving the protectionist legislative clauses without any impact in practice.

Key words: legislation, policies, foreigners, labor market, economic benefit test, labor market test.

Introduction

Even though Albania is typically a country of Emigration, the last decade has marked an increase in the number of foreign workers in Albania. Their presence is not only on areas where high expertise is required, such as executive positions or high experts in international organizations and international companies, but also as unskilled workers in construction, factories or self-employed in services and trade. They are of different nationalities, ranging from the countries in the region, European, American, Chinese and Indian. This number is expected to be further increased in the eventuality of future accession of Albania in EU. Hence, Albania has drafted its policies and the relevant legislation on the employment of foreigners in the country, which envisage the conditions and modalities, including protectionist measures for the internal labor force, while in the same time aiming at compliance with the EU Immigration Legislation.

This paper analyses the current developments in the international work force in the country, trying to understand whether such labor force does actually have any impact in the unemployment levels of the internal work force and uses the data to envisage the likely developments in the future- both in practice and regarding legislation and policies.

The paper is divided into three sections. At first, it highlights briefly the EU Policies and Legislation on migration for employment, which will serve as a comparative standard for the Albanian one. The second chapter analyses the developments in the Albanian legislation and policy and their impact in the labor market. This part section analyses the data on the foreigners employed in Albania, the areas of expertise and specialization they bring/work *vis a vis* the areas where there is high level of unemployment in the country. On the basis of such analyses and research, it scrutinizes whether the legislation and policies are in compliance with the labor market needs, whether the labor market test and economic benefit test they envisage as essential and prerequisite in employment of the foreigners in Albania are actually implementable in practice.

The third section provides recommendations for a better implementation of the legislation, with the view of balancing protectionist approach with labor market test and economic benefit test.

1. General Remarks on Standards of Employment of Foreigners in EU

EU has adopted a two dimensional approach regarding the employment of immigrants: it has envisaged a *facilitated* procedure for high skilled workers and researchers, given the shortage and need for such category of workers in EU; and *restrictive*- protectionist approach for employment of third country nationals that do not fall under high skilled workers scheme.¹

More specifically, the approval of the Blue Card Directive² highlights the importance for facilitation of the procedures for employment of the high skilled workers in EU so as to make employment in EU attractive for such a category of immigrants. While facilitation of employment is the main objective, the Directive does include also protectionist measures for the internal labor market as it envisages the right of the Member States to verify whether the concerned vacancy could not be filled by national or Community workforce, by third-country nationals lawfully resident in that Member State and already forming part of its labor market by virtue of Community or national law, or by EC long-term residents wishing to move to that Member State for highly qualified employment in accordance with Chapter III of Directive 2003/109/EC.³

This objective has been strengthened further in the same article, when it envisages a period of two years of restriction of employment only for the area/field for which it was admitted, prior to gaining the right for *equal treatment with nationals as regards access to highly qualified employment*. Changes of employers are subject of prior authorization in writing by the competent authorities of the concerned state. Similar approach is envisaged also for admission of third country nationals for research positions⁴. A restrictive policy is reflected in the admission of TCN for *employment purposes* and *self employment*. This is rationale, given the realities of the EU labor market-

¹A specific regime is envisaged for seasonal and intra-corporate transferred workers- given the short term feature of such employment related to particular seasons. This category will not be subject of this article, due to the temporary nature of their work, thus, it is not further analyzed.

² Council Directive 2009/50/EC

³ Article 11, *Ibid*.

⁴ See for more the Directive for Admission of Researchers.

demand and offer for TCN workers in EU. While it is normally accepted that there is shortage and need for some unskilled workers,⁵ there is in the same time a very high demand from the third country nationals, who seek employment or self employment in such areas.

Admission for *paid employment*⁶ is governed by two specific criteria: **First-** it is not possible for any TCN to work on EU without a work permit⁷, whatever the period of employment. The work permit is limited to a specific work and specific employer.

Secondly- admission of immigrants for employment purposes shall be subject of the internal *labor market test*. A foreigner can be accepted only after a careful assessment of the internal labor market and if that vacancy can not be filled from an EU citizen or TCN who has already the right to enter the labor market.

Admission for *self employment*⁸ is governed by a specific procedure, which substitutes labor market test with the principle of *economic benefit test*, which requires that the immigrant must be admitted in a MS only if the exercise of the independent economic enterprise will have effect on the employment and economic development of the country. This is followed by the obligation to prove that the immigrant have financial means and the necessary expertise, in compliance with the business plan, to avoid that it will end up in a paid employment relationship. In most of the EU countries, admission as self employed is conditioned by existence of a specific capital.⁹

The approach adopted by the MS is to admit for the purpose of pursuing self-employed occupation, only those third-country nationals who add value (investment, transfer of technology, job creation) to the economy of the host country. Facilitation of the procedures will be made for the third country nationals who make substantial investments in the commerce and industry of the MS.¹⁰

2. Albanian Legislation and Policy on Immigration

The employment of the foreigners in Albania is phenomena of the last two decades, starting mainly as employment of international experts in international organizations or executives in private companies. Only recently, the number of foreigners has been increased, including also those in middle position or blue collars positions. According to the Albanian Migration Profile¹¹, the legal immigration in Albania is mainly for employment and family reunification. Many foreigners enter Albania for study, with its peak number at 2010, and some others enter for humanitarian and religious activities.

5 See migrantinfo.gov.uk reporting of 56 million immigrants needed up to 2050 in EU.

6 Council Resolution on Limitation of Admission for Employment of third country nationals.

7 In December 2011 was approved the Directive for a Single Permit, converging both the work permit and residence permit in one.

8 Council Resolution of 30 November 1994 on admission of third country nationals for self employment.

9 I.e Sweden- 300.00 euro.

http://ec.europa.eu/bepa/pdf/publications_pdf/special_editions/practical_h_andbook.pdf, p.3)

10 http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_immigration/l33067_en.htm

11 See Albanian Migration Profile, 2010 at www.km.gov.al

The highest number of foreigners has been during the year 2009, around 7000 foreigners, with 30% of them from Turkey. This correlates with the building of a National Road- which links Albania to Kosovo, which was constructed from an American-Turkish consortium and resulted in a considerable number of Turkish workers being employed in Albania for that purpose.

Given that limited number (0.2% of the population)¹², immigration has not been treated in a holistic approach by any governmental strategy. The first political document addressing the employment of the foreigners in Albania is the National Strategy on Migration in 2005, which envisaged the need for an adequate legal basis regarding the entry, stay and exit of the foreigners.¹³ The tendency was towards creating flexible and convenient entry and stay procedures for foreigners, while in the meantime fighting illegal immigration through Albania towards EU.

Thus, employment of the foreigners, due to the limited number, has not been treated with priority- and considerations of protection measures have not dominated the political discourse. This is due to the fact that Albanian immigration has been mainly immigration of white collars, a category which has been considered important in the phase of development of the country after the fall of communism. However, currently, the foreigners in the country do not all fall under the high qualified workers category. The level of unemployment in mid-expertise and low skilled workers would normally require protectionist measures for the labor market. On the other hand, the increased number of Albanians educated in the western universities and the Brain Gain initiatives¹⁴ undertaken by Albania to bring back the successful immigrants indicate that the employment of the foreign experts is not a priority during this decade.

Regardless of the lack of focused policies, the status of the foreigners in the country has been regulated by the **legislation**, including Constitutional Clauses. The latter envisages that the rights and fundamental liberties as well as obligations enshrined by the constitution are to be enjoyed also by the foreigners or stateless persons, unless the constitution expressly mentions the condition of citizenship.¹⁵ Rights related with the citizenship are: the right to elect or be elected, the right not to be deported, the right of citizens for equal health care. Employment rights are not connected with the citizenship, thus they are equally pertaining to the foreigners. The Constitution envisages that every one has the right to earn the means of living by *lawful work*, chosen or accepted freely by the person. Employees have the right to social protection, unemployment assistance, social security etc.¹⁶

Thus, the Albanian Constitution does not differentiate between employment rights of nationals and foreigners. However, the Constitution specifies the term '**lawful**' work, which when concerns the foreigners is to be interpreted 'those foreigners admitted lawfully for employment

12 See Migration Profile- Albania, p.12 at www.km.gov.al

13 See National Strategy on Migration.

14 See Brain Gain Project www.km.gov.al

15 See Art.16 of the Albanian Constitution.

16 See Arts 50, 51, 52 and 53 of the Albanian Constitution.

purposes'. Hence, the procedures for admission to work lawfully are to be found in the specific law on foreigners.

The first law that covered employment of foreigners after the 1991 was Law on Migration no.7939/1995. Such law dealt both with emigration and immigration.¹⁷ A specific law on immigration was enacted only in 1999- 'Law on Foreigners no.8492/1999' which dealt with the entry, stay and employment of the foreigners in the country. Such legal basis continued for around one decade, until 2008, with the approval of the new Law on Foreigners no.9959/2008 (LOF), which is currently regulating the employment of foreigners in Albania.

The current LoF, in line with the EU Acquis, envisages that employment of foreigners in the country is subject to a work permit obligation.¹⁸ This is a novelty as compared to the previous law, which required work permit only for employments longer than three months. The LoF clarifies the procedures for different categories of employees, such as intra corporate transferees, seasonal workers, self employed or employees. Due to the objective of this article, we are not scrutinising various categories of work permits, procedures and documents required for each of them, but will be focusing only on the paid employment and self-employment, as two categories with the highest number of immigrants in the country.

LoF envisages that the **work permit for the foreigner for paid employment** shall be issued taking in consideration the needs of the *labour market* in Albania.¹⁹ More specifically, the Labour Employment Offices, responsible for issuing the work permit must perform the labour market test- thus, they must evaluate whether the vacancy can be filled by Albanian citizens, or foreigners that are members of the family of the Albanian citizen or of the family of foreign citizen who have legal status in Albania.²⁰ Also, priority is given to the foreigners who have already been in Albania for more than two years and have carried out legal activities or the foreigners with Albanian nationality, foreigners who have finished a private or public professional high school in Albania etc.²¹

Similarly with the EU Acquis, **admission as self employed**, is underlined by the idea that it should benefit to the economy of the country, thus, the test of the economic benefit shall take place. LoF envisages that the work permit for the foreigner as self employed shall be issued taking into consideration the developments and needs of the labor market in Albania, after evaluation of the economic benefit of the activity of the self employed. It is not clear what the law says 'when it refers that such test is not performed for specific sectors with strategic nature in Albania and for activities that will create employment opportunities in the country' because, this is actually the benefit test.²²

Also the law makes a distinction between two types of work permits for self employed- one called –Work permit for self employed and another one called Work Permit for Investors. The work permit for self employed, when issued for the first time has one year validity. While the work permit for investors is valid for three years, and is given to the foreigner who owns at least 10% of the capital in an enterprise or owns the 10% of the majority of decision taking in the company as well as when the foreigner invests at least 100 thousand Euros.

LoF envisages that the central authority for evaluation of the economic benefit of the activity of the self employed is Ministry of Economy, Trade and Energetic.²³ However it is not clear whether the economic benefit test will be carried out by the ministry of economy on the basis of the request of the foreigner or whether it is MOLSAEO which should do the request. The modalities of the cooperation among two structures, one responsible for issuing the work permit and the other for performing the economic benefit, which is a condition *sine qua non* for issuance of the work permit, are not at all stated in the current provisions.²⁴

There is not any provision regarding employment of the foreigners as high skilled workers or as researchers. Thus, it could be assumed that these categories are subject of the labor market test as other foreigners applying for a work permit (if that test is performed).

What is the situation in practice?

If we refer to the statistics obtained by Migration Profile, prepared by GOA for 2010, during the period 2007-2010, the number of the foreigners that are residents in the country is as following:

Foreign citizens residents in Albania according to citizenship:

¹⁷ See IOM Publication 'Gap Analyses on Albanian Legislation and Practice on Immigration as compared to EU Acquis', 2006, for a comprehensive analyses of this law.

¹⁸ See art.39 of LoF.

¹⁹ See Article 40 of LoF.

²⁰ Ibid.

²¹ See Art.42 of LoF.

²² Ibid.

²³ Article 4 (dh) of LoF.

²⁴ See www.mpcs.gov.al/migracioni/legislacioni

Years	2007	2008	2009	2010
EUROPE (from which):	2894	4298	5007	4114
EU countries	1080	1182	1324	1572
Turkey	1396	2573	2946	1648
Countries in the region ¹	148	355	395	779
Others	270	188	342	115
ASIA	497	819	1046	731
China	276	588	786	381
AMERICA	548	558	480	623
From which : USA.	451	448	447	463
AFRICA	140	131	152	187
TOTAL	4086	5812	6793	5663

As it can be noticed from the table, the majority of the foreigners come from Turkey, who are generally for employment purposes. The number of work permits issued for foreigners in the country is around half the number of residence permits. For example, from 5663 foreigners in 2010, only 1601 work permits were issued. This figure was increased by 700 more work permits issued in 2011.² Tirana Employment offices have issued the highest number of work permits, around 50% of the total.³ The majority of the work permits issued both in 2010 and 2011 are for paid employment, which amounts around 75% of the total of the work permits. The remainder is for self employment and a limited number is for intra-corporate transferees.⁴ The foreigners in Albania work mostly in construction, trade, social and collective services and education. As below is a breakdown of employment sector for the year 2010.

Activity	No. WP
Oil and mines	150
Health and social activities	115
Collective-Public, social and personal services	236
Trade and vehicle repair	228
Construction	259
Education	152
Others	454
Total	1594

During the year 2011, the ratio has been reversed between work permits issued for trade and vehicle repair and those for construction, with the 358 work permit for the former and 281 for the latter. The number of Work Permits issued for Mine and Oil industry is 265, Collective social services is 244, metalurgia is 184. In 2011, there is an increase of 30% for the paid employment and 20% for self employment as compared to the year 2010.⁵

While a breakdown of citizenship of foreigners with work permit is provided as below (2010):

State	Work permit	State	Work permit
Turkey	567	Croatia	39
China	190	Serbia	30
Italy	139	India	29
Greece	101	America	29
Macedonia	61	Monte-negro	23
Canada	56	Germany	21
Kosovo	55	Egypt	16
Philipine	54	England	14
Austria	41	Others	129
Total		1594	

During the year 2011, the trend continued to be the same, with 593 work permits issued to Turkish citizens, 273 issued to Chinese, 243 issued to Italian and

¹ Region includes Western Balkans such as: Montenegro, Kosovo, Macedonia, Croatia, Serbia, BH.

² See Migration Profile, 2010. See also statistics from MOLSAEO for the year 2011. File with the authors.

³ Ibid.

⁴ Ibid, p.19.

⁵ See Data and Analyses from the Ministry of Labour and Social Affairs, file with the authors.

172 issued to Greek citizens. It is very interesting the continuing trend for Philippine workers, mainly as domestic workers. A steady increase is noticed also regarding work permits issued to foreigners from Kosovo, who in 2011 obtained 98 work permits as opposed to 55 in 2010. For this latter category there are fee points to be taken into account. First, a considerable of Kosovo persons that live in Albania, do not apply either for work permit or residence permit. They use the 90days system in and out in the country as a way to stop to this system. Secondly, the majority of them (including Albanian ethnics from Macedonia) work as self-employed.

The foreigners in Albania have been mainly employed in companies owned by foreigners, and in a more limited way, by Albanians. According to the migration data and analyses from the Ministry of Labour and Social Affairs, there is a preference of some companies for foreign workers, not only for the lacking expertise of the Albanian nationals, but also and in particular for the cheap labor force, which is the case of Chinese. This latter category needs a specific attention.

What is the level of unemployment in the country?

It is difficult to have accurate data for the level of unemployment in the country, as the majority of unemployed does not register at the employment offices, due to the lack of realistic incentives for such registration. However, from the available data, during the years 2009-2010, the unemployment has been around 13%. The highest number of registered unemployed is persons with elementary education (8 years) and those with high school education. The majority of the unemployed are long term unemployed, ranging up to 62% in 2010. 32% of the registered unemployed are without any profession.

The data from the Employment offices-studies of the labor force from the perspective of the enterprises- indicates that in most of the cases, the registered unemployed are not recruited because they lack either the relevant profession or the relevant education. In general, the companies prefer workers with high school.

Thus, from the data as above it can be noted that for certain employment areas such as construction, oil and mines etc, there is not required a specific education, which could be matched with the Albanian workers. Also, the category of those involved in various public services, who are mainly from the region- Kosovo and Macedonia, with the Albanian citizenship, does not require specific skills and expertise.

In practice, the labor employment offices do not have the means and possibilities for a careful evaluation of the labor market. It is true that the legal basis includes the obligation for performing such test, but its practical implementation has proved difficult. Prior to issuing the work permit, the

labor offices require only a formal advertisement in the offices for the vacancy, but does not enquire further, whether a selection process has taken place at all for the national job-seekers. That is the reason why in practice, it is not the lacking expertise, but the cheap labor force, which has prompted and is prompting some businesses to prefer the foreign work force. This trend must be taken in consideration, in particular in the eventuality of an increased number of foreigners.

Similarly, the steady increase of self employed in trade and services is not governed in practice by the market benefit test. As mentioned above in this article, there is not at all any clarity on the way such test will take place. Careful consideration is needed in particular for guaranteeing that the foreigner will not end up as paid employed.

3. Conclusion

There is a lack of clear policies in Albania on employment of the foreigners. The legislation tends to envisage a restrictive regime, through a filtering system underlined by the both the labor market test and the economy benefit test. This legal basis is generally in line with EU Acquis. However, the reality lags quite behind. The labour offices mandated with the issuance of the work permits do not follow clear procedures on issuing such permits. While this does not have any clear impact on the labour market, due to the limited number of foreigners, it has to be carefully kept into consideration in the event of albanian's accession to EU. At any case, if the steady flow continues, it will be the need for reconsidering the position, from an ad hoc open door policy to restrictive one.

Given that a considerable number of foreigners work in unskilled position, and the majority of those registered as unemployed are unskilled ones, the labor offices should give priority to the registered Albanians for the advertised position.

Albania does not have any legal act to facilitate the researchers and qualified immigrants. It is suggested that it amends the LoF to meet the EU Directives on Researchers and Qualified ones. Currently, given the flexible procedures for all categories of foreigners, this category also does not suffer from the labor market test.

Given the high number of employed/self-employed from Kosovo and Macedonia, that work without work permit, it is the case that an awareness campaign on the need for work permit, target such category in the borders. This would give better insights on the data on foreigners employed in the country.

Albania could also consider the option of a single permit, to facilitate procedures but in the meantime to centralize the process and to make it easier for swift procedures in collecting and analyzing the data for foreigners.

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