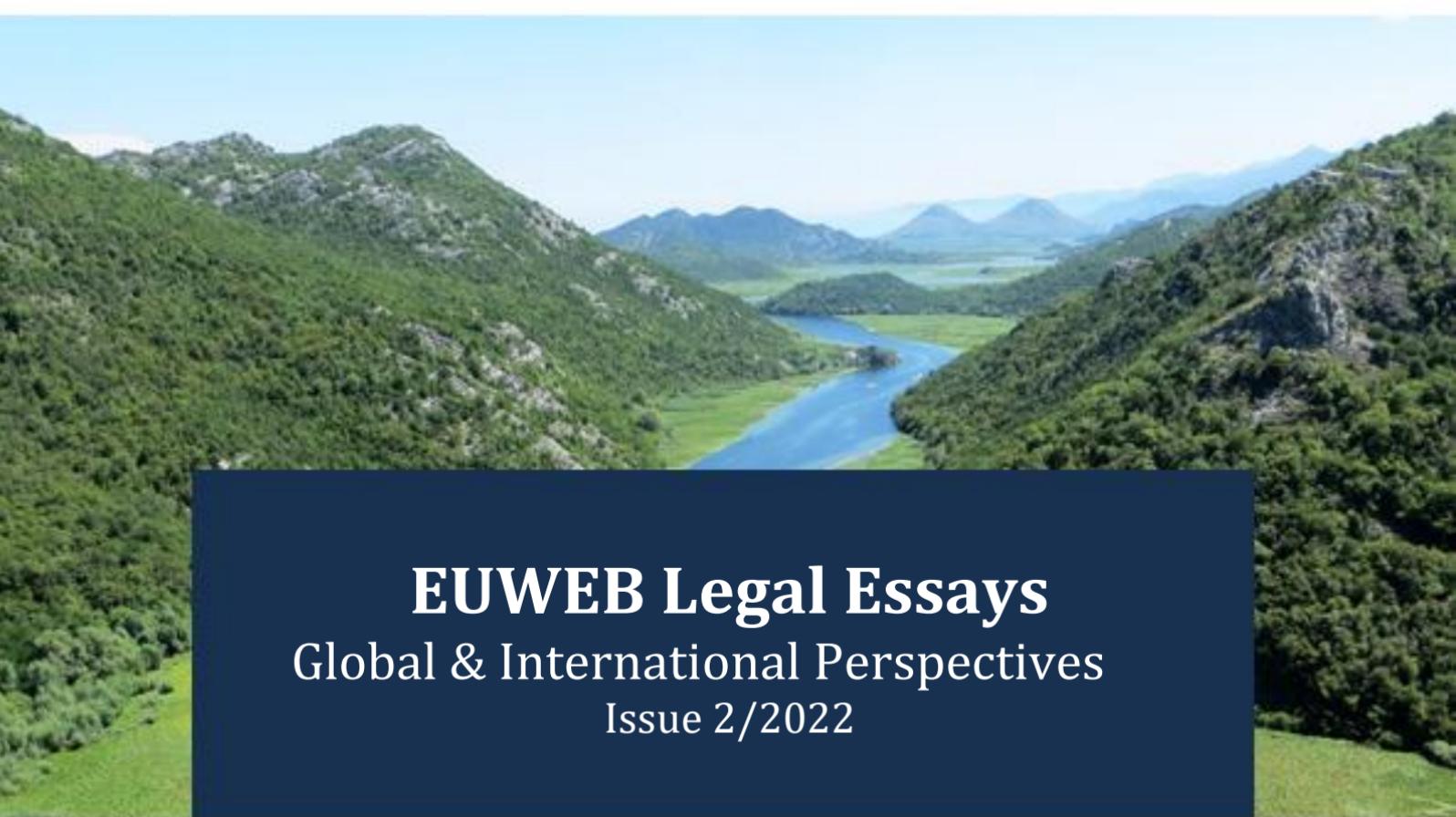


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THE RIGHT TO EDUCATION OF ASYLUM SEEKERS AND REFUGEES. THE REFLECTION OF INTERNATIONAL INSTRUMENTS AND STANDARDS IN ALBANIAN LEGISLATION

by Heliona Miço*

SUMMARY: 1. Introduction. – 2. The Protection of the Right to Education of Refugees in the International Human Rights Law: A Look at the 1951 Convention on the Status of Refugee and the European Convention of Human Rights. – 3. The Albanian Legal Context of the Right to Education of Asylum Seekers and Refugees. – 3.1. Guaranteeing the Right to Education in Domestic Legislation. – 4. Conclusions: The Responsibility of Delivering the Right to Education for Asylum Seekers and Refugees. Where Is It?.

1. Introduction

Before the 1990s, when Albania was under the communist regime, both the number of foreigners and their constitutional rights were very limited. The 1976 Constitution recognized the right to housing only for foreigners who were persecuted for their work in the benefit of revolution, socialism, democracy and national liberation, as well as for the advancement of science and culture¹. As for the Albanian citizens' freedom of movement, apart from not being sanctioned in the Albanian Constitution, it was prohibited². During the communist regime, the borders of isolated Albania were strictly controlled and Albania did not recognise the 1951 Refugee Convention. However, Albania accepted the 1951 Convention and 1967 Protocol relating to the Status of Refugees, on August 18, 1992³. Through accepting these international instruments on human rights, Albania undertook the obligation to recognize and guarantee human rights and freedom to people who obtained the refugee status. Considering that Albania was a country that did not respect human rights, it was very important to embrace them in democracy. However, despite the ratification of the Convention on the Status of Refugees, Albania was unlikely to be considered as a host country for refugees at a time when post-communist authorities were keen to allow Albanians to leave the country after it was hit by poverty⁴.

Nonetheless, the rights of refugees in the domestic legislation were introduced after 6 years being incorporated in the 1998 Constitution of Albania⁵, as well as in the first law

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¹ Law no. 5506, dated 28.12.1976, *Kushtetuta e Republikën Popullore Socialiste e Shqipërisë* (Constitution of Socialist Popular Republic of Albania).

² HUMAN RIGHTS WATCH, *Human Rights in Post-Communist Albania*, 1996, available at <https://www.refworld.org/docid/3ae6a7f30.html>.

³ UNHCR, *Background Information on the Situation in Albania in the Context of the "Safe Third Country" Concept*, available at <https://www.refworld.org/docid/3ae6b31c44.html>.

⁴ R. PESHKOPIA, *Albania – Europe's Reluctant Gatekeeper*, in *Forced Migration Review*, No. 23, 2005, pp. 35-36.

⁵ Art. 16 of the Constitution of the Republic of Albania, adapted by the law no. 8417, dated 21.10.1998, as amended.

of 1998 “*on Asylum in the Republic of Albania*”⁶. Anyhow, the first confrontation of Albania with the massive presence of Kosovo refugees happened in 1999, by making the Kosovo emergency a relatively unusual event in the history of refugee movements⁷. The treatment of Kosovo refugees required the state to implement the obligations to respect the human rights sanctioned in international instruments, as well as in domestic legislation. The main attention was focused on the need of refugees for space, food, and health care⁸, paying little attention to the right to education of children and adults. This was because the notion of legal protection and, by extension, the legislative field and the enjoyment of human rights was still not elaborated in the state policies for the management of refugees. According to Goodwin-Gill⁹, legal protection means using the legal tools including treaties and national laws, which prescribe or implement the obligations of states and which are intended to ensure that no refugee in search of asylum is penalized, expelled or rejected, that every refugee enjoys the full complement of rights and benefits to which he or she is entitled as a refugee; and that the human rights of every refugee are guaranteed.

Despite the fact that Albania is still considered a country of origin for asylum seekers and irregular migrants into the European Union (EU)¹⁰, the country has been affected by mixed migration flows which include refugees and asylum seekers, migrants, unaccompanied and separated minors, trafficked victims¹¹. The increase in the inflow of irregular migrants and asylum seekers draws attention to the respect and protection of human rights in line with all international principles. Since the first adoption of the law “On Asylum” in 1998, the recognition, guarantee and protection of the human rights of refugees have been gradually approximated with the international human rights law, giving priority to each of the human rights. On the other hand, the ratification of Stabilization and Association Agreement between European Communities and Albania was built on the principle of respect for democratic principles and human rights, which Albania agreed to implement (Council of the European Union, 2006).

This article pays attention to the analysis of the right to education of refugees in Albania, in the light of the international instruments, the Albanian legal framework and the responsibilities recognized to the state towards implementation of this right. Through the analyses of the key documents on education and asylum in international and domestic spheres, as well as the analyses on the sources of law, the article answers the following questions: 1) Do refugees fall under the international law for the protection of the right to education? 2) Does the right to education in Albanian legislation have a moderate

⁶Law no. 8432, dated 14.12.1998, *on Asylum in the Republic of Albania*, as amended, retrieved from <https://www.qbz.gov.al/eli/ligj/1998/12/14/8432/5b04bae5-1be0-48ea-8c8f-a592c717070e;q=ligji%201998%20per%20azilin>.

⁷United Nations High Commissioner for Refugees (UNHCR), *The Kosovo Refugee Crisis. An Independent Evaluation of UNHCR's Emergency Preparedness and Response*, EPAU/2000/001, 2000, available at <https://www.unhcr.org/3ba0bbeb4.pdf>.

⁸R. KONDAJ. *Management of Refugee Crisis in Albania during the 1999 Kosovo Conflict*, in *Croatian Medical Journal*, No. 43, 2002, pp. 190–194.

⁹G. GOODWIN-GILL, *The International Law of Refugee Protection*, in E. FIDDIAN-QASMIYEH, G. LOESCHER, K. LONG, N. SIGONA (eds.) *The Oxford Handbook of Refugee and Forced Migration Studies*. Oxford, 2014, pp. 36-47.

¹⁰L. IKONOMI, *Study Report on the Rights and Freedoms of Migrants, Asylum Seekers and Refugees in Albania, during 2012 – 2017*, Tirana, 2018.

¹¹INSTITUTE FOR DEMOCRACY AND MEDIATION, *Policy Brief: Vulnerable Asylum Seekers and Irregular Migrants in Albania. Trends, Challenges and Policy Solutions*, 2019, available at https://idmalbania.org/wp-content/uploads/2021/11/policy-brief_Vulnerable-asylum-seekers-and-irregulat-migrants.pdf.

deviation from the framework of international law for education for refugees in the formal and substantive aspect? As Prof. Fons Coomans, United Nations Educational, Scientific and Cultural Organization (UNESCO) Chair in Human Rights and Peace argues, the right to education is considered as a human tool for everyone, particularly for the asylum seekers and refugees to protect human dignity and to empower people towards self-fulfilment and personal development¹².

2. The Protection of the Right to Education of Refugees in the International Human Rights Law: A Look at the 1951 Convention on the Status of Refugee and the European Convention of Human Rights

Following the World War II, the right to education was granted to every human being without discrimination. Art. 26 of the Universal Declaration of Human Rights establishes that “*everyone has the right to education*”. The aims of education according to the Universal Declaration of Human Rights are focused on the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms¹³. This means that education is considered indispensable for all human beings, in all times and all societies and the state is responsible for the achievement of this right for all people¹⁴. The universal and the unlimited enjoyment of the right to education refers also to the asylum seekers, refugees and migrants. According to the 1951 Refugee Convention, a refugee is considered someone who is unable or unwilling to return to their country of origin due to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion¹⁵.

Although the Universal Declaration of Human Rights has non-legal binding effect, the right to education is reinforced by a number of international treaties which are focused on the universal recognition and protection of this right. Of particular interest is the 1966 International Covenant on Economic Social and Cultural Rights (ICESCR)¹⁶, where the right to education is extensively addressed in arts. 13 and 14¹⁷. The art. 13 of the International Covenant on Economic Social and Cultural Rights can be considered one of the most important statements of the right to education in an international agreement¹⁸. Even though the aims of education stipulated in the ICESCR are similar to the Universal Declaration of Human Rights, there are two additional elements. Firstly, it refers to the development of the human personality and the sense of its dignity¹⁹. According to the

¹²F. COOMANS, *Education as a Human Right for Migrants UNESCO Chair in Human Rights and Peace*, 2016, available at <https://en.unesco.org/node/301084>.

¹³ United Nations Universal Declaration of Human Rights, 1948, available at <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

¹⁴K. HALVORSEN, *Notes on the Realization of the Human Right to Education*, in *Human Rights Quarterly*, Vol. 12, No. 3, 1990, p. 341.

¹⁵United Nations Convention Relating to the Status of Refugees, 1951, art. 1 (A) entered into force on 22 April 1954, and Protocol Relating to the Status of Refugees (1967), art. 1 (2) entered into force on 4 October 1967.

¹⁶United Nations International Convention on Economic, Social and Cultural Rights, 1996, adopted on 16 December 1966, by General Assembly Resolution 2200A (XXI), available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>.

¹⁷K. BEITER, *The Protection of the Right to Education by International Law.*, Vol 82, Leiden-Boston, 2006, p. 94.

¹⁸United Nations, *Right to Education, Scope and Implementation: General Comment No. 13 on the Right to Education* (art. 13 of the International Covenant on Economic, Social and Cultural Rights), 2003.

¹⁹ K. BEITER, *op.cit.*, p. 95.

preamble of the ICESCR, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world. Secondly, it states that education should enable all persons to participate effectively in a free society. This means that every member states of this convention, not only enjoys the right to education, but enjoys the right to be formed as an individual in order to fully participate in society. The term “All” includes non-nationals, such as refugees, asylum-seekers, stateless persons, migrant workers and victims of international trafficking, regardless of legal status and documentation, who are recognized the rights provided in the covenant²⁰.

In the light of the right to education, art. 13 (2) (a) provides that primary education be compulsory and available free to all, secondary education in its different forms be made generally available and accessible to all by every appropriate means (art. 13, 2, b) and higher education be made equally accessible to all, on the basis of capacity (art. 13, 2, c). Furthermore, art. 13 (2) e) highlights the state obligations regarding the development of a system of schools at all levels, the establishment of an adequate fellowship system, and continuous improvement of material conditions of teaching staff.

The protection of inclusive nature of the right to education is sanctioned in art. 1 of the Convention against discrimination in education²¹. The term “discrimination” includes any distinction, exclusion, limitation or preference which, being based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, has the purpose or effect of nullifying or impairing equality of treatment in education and in particular:

- a) Of depriving any person or group of persons of access to education of any type or at any level;
- b) Of limiting any person or group of persons to education of an inferior standard;
- c) subject to the provisions of art. 2 of this Convention of establishing and maintaining separate educational systems or institutions for persons or group of persons; or
- d) Of inflicting on any person or group of persons conditions which are incompatible with the dignity of man.

The Convention against Discrimination in Education has provided in detail the prohibition of all forms of violation that may be done to the right to education, starting with the deprivation of an individual to receive this right, continuing with the restriction of the right, its provision in a segregated manner and any other violation that may be infringed on the right to education by member states. It is important to note that the term “education” according to this convention refers to all types and levels of education and includes access to education, the standard and quality of education and the conditions under which it is being offered.

It is art. 4 of the Convention against discrimination which specifies the state obligations toward providing the right to education on equal bases. These obligations do not exclude asylum seekers or refugees as rights-holders, but rather require contracting states to take all measures:

²⁰ United Nations Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 20: Non-Discrimination in Economic, Social and Cultural Rights* (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights), E/C.12/GC/20, 2009, available at: <https://www.refworld.org/docid/4a60961f2.html>.

²¹ United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention against Discrimination in Education, 1960, available at http://portal.unesco.org/en/ev.php-URL_ID=12949&URL_DO=DO_TOPIC&URL_SECTION=201.html.

a) To make primary education free and compulsory; make secondary education in its different forms generally available and accessible to all; make higher education equally accessible to all on the basis of individual capacity; assure compliance by all with the obligation to attend school prescribed by law;

b) To ensure that the standards of education are equivalent in all public educational institutions of the same level and that the conditions relating to the quality of education provided are also equivalent;

c) To encourage and intensify by appropriate methods the education of persons who have not received any primary education or who have not completed the entire primary education course and the continuation of their education on the basis of individual capacity;

d) To provide training for the teaching profession without discrimination.

The main obligation to the contracting states falls on the provision of the right to compulsory primary education, reducing the level of obligation to provide secondary education, vocational education and higher education²². Still, the purpose of Convention against discrimination is undeniable in the fight against discrimination in education to promote equality of opportunity and treatment for all in education²³.

The UN Convention on the Rights of the Child (CRC) of 1989²⁴ is another international instrument which identifies the refugee children as rights-holders and strongly emphasizes the right to education for all without discrimination. The recognition and respect of the rights set forth in the Convention by the state parties to each child within their jurisdiction is connected with the obligation of the state to respect these rights to each child, not only nationals²⁵. Art. 22 of the CRC obliges States Parties to take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by their parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention. As of 2017, 12 million child refugees and child asylum seeker were school-aged children²⁶; this data show how necessary is the right to education to these children.

The Convention protects the right of education through two articles, art. 28 and art. 29. By recognizing the right of every child to education, state parties are engaged to make primary education compulsory and available free to all; to develop different forms of secondary education including general and vocational education by making them available and accessible to every child, by taking appropriate measures towards introduction of free education; and to make higher education accessible to all on the basis of capacity. State parties shall promote the international cooperation in order to eliminate

²²J. FERNÁNDEZ, *International Legal Protection of the Right to Education for Refugees and Asylum-Seekers. Developments and Challenges*. Ku Leuven- Katholieke Universiteit Leuven European Master's Degree in Human Rights and Democratization, A.Y. 2016/2017, 2017, available at <https://repository.gchumanrights.org/bitstream/handle/20.500.11825/516/Gonzalez%20Fernandez.pdf?sequence=1&isAllowed=y>.

²³K. BEITER, *op.cit.*, p. 244.

²⁴Art. 2 of the Convention on the Rights of the Child, available at <https://www.ohchr.org/sites/default/files/crc.pdf>.

²⁵United Nations Committee on the Rights of a Child, *General comment No. 14 on the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration* (art. 3, para. 1), CRC/C/GC/14, available at https://www2.ohchr.org/english/bodies/crc/docs/gc/crc_c_gc_14_eng.pdf.

²⁶United Nations Children's Fund (UNICEF) *et al.*, *A call to Action – Protecting Children on The Move Starts with Better Data*, 2018, available at https://data.unicef.org/wp-content/uploads/2018/02/Migration_advocacy_Feb20.pdf.

ignorance and illiteracy throughout the world²⁷. The objectives of education, among others are directed toward the development of respect for the child's parents, their own cultural identity, language and values, for the national values of the country in which the child is living, the country from which they may originate, and for civilizations different from their own. Through the fulfilment of these objectives, states undertake to provide inclusive education for asylum-seeking and refugee children, keeping in balance both the national education and child's culture and language.

Nevertheless, the 1951 Convention relating to the Status of Refugees (CSR) and its 1967 Protocol (PCSR), contain specific provisions related to the right to education of refugees²⁸. Art. 22, para. 1 of the Convention relating to the Status of the Refugees states that the Contracting States shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education. The access to elementary education for refugees is offered in the same way for both nationals and refugees. However, Art. 22 does not include the right to receive a public education in the parents' language²⁹.

Art. 22, para. 2 of the Convention relating to the Status of Refugees provides the obligation of the state parties to accord to refugees, as equal treatment as possible, and, in any event, not less favourable than that accorded to generally in the same circumstances, with respect to education other than elementary education and, in particular, as regards access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships. What should be emphasized is that the convention is not limited to the provision of education beyond the elementary education level, associating this right with the provision of specific aspects, such as recognition of foreign school certificates, diplomas and degrees, the reduction of fees and charges and the award of scholarships in order to make the right to education accessible. It is noted, however, that the convention does not guarantee in the same way to elementary education, the enjoyment of this right beyond this level of education³⁰.

Regarding regional protection, the European Convention of Human Rights deals with the right to education in the art. 2 of the First Protocol "*No person shall be denied the right to education*"³¹. This recognition of the right has a comprehensive character, not setting limits for individuals who benefit from this right or for the level of education to which individuals have access. Art. 2 of Protocol No. 1 refers to basic education, secondary education, higher education, as well as specialized courses. In this manner, holders of the right guaranteed in art. 2 of the Protocol are not only the children, but also adults, as well as any other person who wishes to benefit from the right to education.

The extent of the right to education does not preclude refugees from enjoying and exercising this right. According to Willems and Vernimmen³², a restricted interpretation of the provision will limit the aim of the right to education as a fundamental human right.

²⁷ J. LAWRENCE, A. DODDS, I. KAPLAN, M. TUCCI, *The Rights of Refugee Children and the UN Convention on the Rights of the Child*, in *Laws*, 8, 20, 2019.

²⁸ UN Convention relating to the Status of Refugees, 28 July 1951, available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-relating-status-refugees> and UN Protocol relating to the Status of Refugees, New York, 31 January 1967, available at https://treaties.un.org/doc/Treaties/1967/10/19671004%2007-06%20AM/Ch_V_5p.pdf.

²⁹ UNESCO and Global Education Monitoring Report, *Paper commissioned for the 2019 Global Education Monitoring Report, Migration, Displacement and Education: Building Bridges, not Walls*, 2018, available at <https://unesdoc.unesco.org/ark:/48223/pf0000265927>.

³⁰ K. BEITER, *op.cit.*, p. 124.

³¹ The Convention for the Protection of Human Rights and Fundamental Freedoms, 1950, and the First Protocol of the Convention, 1952, available at https://www.echr.coe.int/documents/convention_eng.pdf.

³² K. WILLEMS, J. VERNIMMEN, *The Fundamental Human Right to Education for Refugees: Some Legal Remarks*, in *European Educational Research Journal*, Vol. 17(2), 2018, pp. 219-232.

This position was also held by the European Court of Human Rights in the case of *Ponomaryovi v. Bulgaria*³³. The Court found a violation of art. 14 of the Convention considering it related to art. 2 of Protocol No. 1, since the circumstances on nationality and immigration status did not justify the payment of fees for the secondary education of the applicants.

The characteristics of the right to education sanctioned in art. 22, para. 2 of the Convention relating to the Status of Refugees are also elaborated by the jurisdiction of the European Court of Human Rights. Although the right is recognized by the international framework, it is not an absolute right (*Leyla Şahin v. Turkey*³⁴). It is fully recognized for children of elementary school age, and is expected to be offered in the same way to both local citizens and refugees.

However, even for elementary education it is offered in a limited way, as the Convention relating to the Status of Refugees does not recognize the refugee children the right to receive a public education in the parents' language. (Case “*relating to certain aspects of the laws on the use of languages in education in Belgium*” (“the Belgian linguistic case”)³⁵. The right to elementary education does not differentiate nationals from refugee children, despite the fact that it is not offered in a differentiated manner based on refugee’s children needs.

Regardless of the fact that the case law developed by the European Court of Human Rights has not dealt closely with cases related to the violation of the right to education of refugees and asylum seekers, the Court has addressed in many cases the difficulties relating to education of the people with ethnic origin. Cases such as *D.H. and Others v. the Czech Republic*³⁶ or *Oršuš and Others v. Croatia*³⁷ emphasize the need for equal and non-discriminatory provision of the right to education, in accordance with international legislation.

International human rights law provides for the right of everyone to education including refugees, offering this right without discrimination on the same basis of nationals or other foreigners. However, in 2018 at least 35% of refugee children were not attending primary school programmes and at least 75% of adolescents were not attending secondary school³⁸. Despite the recognition of the right to education of asylum seekers and refugees in international law, it is necessary that this recognition be accompanied by specific guarantees of refugee law and special protection for specific groups of refugees³⁹.

³³ European Court of Human Rights, Judgement of 21 June 2011, Application no. 5335/05, *Ponomaryovi v. Bulgaria*.

³⁴ European Court of Human Rights, Judgement of 10 November 2005, Application no. 44774/98, *Leyla Şahin v. Turkey*.

³⁵ European Court of Human Rights, Judgement of 23 July 1968, Application nos. 1474/62 1677/62, 1691/62, 1769/63, 1994/63 and 2126/64, *Case relating to certain aspects of the laws on the use of languages in education in Belgium* (“the Belgian linguistic case”).

³⁶ European Court of Human Rights, Judgement of 13 November 2007, Application no. 57325/00, *D.H. and others v. the Czech Republic*.

³⁷ European Court of Human Rights, Judgement of 16 March 2010, Application no. 15766/03, *Oršuš and Others v. Croatia*.

³⁸ UNHCR, *Refugee Education 2030. A Strategy for Refugee Inclusion*, 2019, available at <https://www.unhcr.org/publications/education/5d651da88d7/education-2030-strategy-refugee-education.html>.

³⁹ C.HARVEY, *Time for Reform? Refugees, Asylum-seekers, and Protection Under International Human Rights Law*, in *Refugee Survey Quarterly*, Vol. 34, Issue 1, 2015, pp. 43-60.

3. The Albanian Legal Context of the Right to Education of Asylum Seekers and Refugees

In the legislative aspect, Albania considers the ratified international agreements as very important sources of law, placing them in the second level to the hierarchy of sources⁴⁰. Even the European Convention on Human Rights is directly invoked by the Constitution of Albania in the art. 17, providing that the restriction of human rights that can be done by the Albanian state, does not violate the essence of freedoms and rights and in no case may exceed the limitations provided for in the European Convention on Human Rights.

The Constitution of the Republic of Albania recognizes the right to education as one of the fundamental human rights and freedoms, which is enjoyed and provided equally for all, without discrimination regarding gender, race, religion, ethnicity, political, religious or philosophical convictions, economic, educational, social situation or parental lineage⁴¹. Art. 57 of the Constitution states that “*Everyone has the right to education*”. Compulsory education, as well as general secondary education is free. General secondary public education is open to all, while the access to vocational secondary education and higher education is conditioned by capability criteria.

Apart from the recognition of the right to education for all, the Constitution is focused on the recognition of the fundamental rights and freedoms of aliens and stateless persons. Art. 16, para. 1, of the Constitution states that fundamental rights and freedoms are also valid for foreigners and stateless persons in the territory of the Republic of Albania.

“Article 16

1. The fundamental rights and freedoms and the duties contemplated in this Constitution for Albanian citizen are also valid for foreigners and stateless persons in the territory of the Republic of Albania, except for cases when the Constitution specifically attaches the exercise of particular rights and freedoms with Albanian citizenship”.

Recognition of the right to education for foreign citizens and stateless persons ensures equal opportunities for everybody within the territory of the Republic of Albania to exercise this right. In the case of asylum seekers and refugees who are considered as vulnerable groups⁴², the implementation of the right to education requires greater attention from the state. This position of the Constitution on recognizing fundamental rights and freedoms in general and the right to education in particular, equally, for Albanian and foreign citizens, complies with international standards.

3.1. Guaranteeing the Right to Education in Domestic Legislation

Regarding the domestic legislation, the right to education to asylum seekers and refugees is directly sanctioned by two main laws in Albania, the law 69/2012, “On pre-university education system in the Republic of Albania”⁴³, the law 10/2021 “On Asylum”⁴⁴ and

⁴⁰Art. 116 of the Constitution of the Republic of Albania adopted by law. 8417, dated 21.10.1998, of the People's Assembly, approved by referendum on 22.11.1998 and declared by decree nr. 2260, dated 28.11.1998, of the President of the Republic of Albania.

⁴¹ Art. 18, paras. 1 and 2, of the Constitution of the Republic of Albania.

⁴²D. MENDOLA, A. PERA, *Vulnerability of Refugees. Some Reflections on Definitions and Measurement Practices*, in *International Migration*, 2021, pp. 1-14.

⁴³Law no. 69/2012 dated 21.06.2012, *on the pre-university education system in the Republic of Albania*, published in the Official Gazette no. 87, 2012.

⁴⁴Law no. 10/2021, *on asylum in the Republic of Albania*, published in the Official Gazette no. 28, dated 24.02.2021.

indirectly by the law 80/2015 “On higher education and scientific research in higher education institutions in the Republic of Albania”⁴⁵.

The art. 5 of the Albanian pre-university law guarantees the right to education in the Republic of Albania for foreign citizens and stateless persons, without discrimination based on gender, race, colour, ethnicity, language, sexual orientation, political or religious beliefs, economic or social status, age, place of residence, disability or other reasons defined in the Albanian legislation.

The provision of the pre-university education without discrimination is accompanied by offering public compulsory education and upper secondary education free. Moreover, the right holder of the right to education is “the student” who is defined as the person who is educated in pre-university education⁴⁶. Ensuring the right to education regardless of the nationality of individuals enables refugees and asylum seekers to enjoy this right.

As for higher education for asylum seekers and refugees this right finds an indirect recognition in the Law on higher education⁴⁷. Art. 4 of the law stipulates that the right to pursue higher education belongs to all individuals who have successfully completed secondary education and who meet the relevant admission criteria, set by the legal framework in force and by the Higher Education Institutions. The law has also recognized the right to transfer of studies, the recognition of study periods or recognition of diplomas, certificates and degrees obtained at the end of studies completed abroad (Law no. 80/2015, art 89 and 92). However, the legal framework on higher education does not specifically address the right to education for asylum seekers and refugees, nor does it provide for financial facilities for the fulfilment of this right by these groups of individuals⁴⁸.

The right to education for asylum seekers and refugees is found in the law 10/2021 “On asylum”. However, we are dealing with different measures of recognition of the right to education in relation to applicants for international protection and persons enjoying refugee status and subsidiary protection status. In the case of applicants for international protection, the right to education is limited only to children⁴⁹. Initially, the legal regulations sanctioned the provision of the right to education not necessarily as state obligations. The Asylum Reception Centre⁵⁰ was in charge to ensure minimum living conditions, which include educational programs provided in cooperation with other private, public, domestic or foreign entities. The legal amendments of 2021 recognize the right to pre-university education of minor applicants with the same conditions as minors who are nationals of the Republic of Albania⁵¹. In order to make the right applicable, art. 59 para. 2 of the law “On asylum” has also provided the time when the exercise of this right can begin. “*Attendance by minor applicants of pre-university education shall begin within three months from the date of submission of the application for international protection*”. The legal framework has established the state as the first provider of the right

⁴⁵Law no. 80/2015, *on higher education and scientific research in higher education institutions in the Republic of Albania*, published in the Official Gazette no. 164, 2015.

⁴⁶ Art. 2, para. 16 of the Law no. 69/2012, dated 21.06.2012, *on the pre-university education system in the Republic of Albania*, published in the Official Gazette no. 87, 2012.

⁴⁷Law no. 80/2015, *on higher education and scientific research in higher education institutions in the Republic of Albania*, published in the Official Gazette no. 164, 2015.

⁴⁸Decision no. 269, dated 29.3.2017 of the Council of Ministers, *on determining the categories of individuals who meet the admission criteria in a program of the first cycle of studies, in an integrated program of studies or in a program of professional studies, which are excluded from annual tuition fee*.

⁴⁹Art. 54, para. dh, of the Law no. 10/2021, *on asylum in the Republic of Albania*.

⁵⁰Decision no. 332, dated 4.5.2016, of the Council of Ministers, *on the organization and functioning of the National Asylum Seekers Reception Center*, repealed by Decision no. 630, dated 27.10.2021 of the Council of Ministers, *on the organization and functioning of the Asylum Reception Center*.

⁵¹ Art. 59 of the law no. 10/2021, *on asylum in the Republic of Albania*.

to education for children applicants for international protection, including the provision of textbooks by the responsible ministry, in order to make this right available⁵². In this way, the government may provide the core content of the right to education⁵³.

On the other hand, the range of the right to education is wider for persons enjoying refugee status and subsidiary protection status. The art. 63, para. 1, d, recognizes them the right to pre-university and higher education, on the same terms as Albanian nationals. This means that these persons shall enjoy the right to education, up to the level of protection enjoyed by the nationals of the Republic of Albania. The right to pre-university education is recognized even for the persons who enjoy temporary protection under the law “On asylum”⁵⁴, providing them access to pre-university education on equal terms with Albanian nationals.

As important as the full sanctioning of the law is, its concrete implementation is equally important. And in the case of refugees, statistical data make the right to education impossible to implement in Albania for a period of time. Data published in 2005 UNHCR Statistical Yearbook regarding asylum seekers and refugees in Albania show that beyond the massive presence of Kosovo refugees occurred in 1999, in the period 2001-2005 there were no asylum seekers or refugees⁵⁵. However, the number of asylum seekers and refugees is increased, as well as the diversity of the country of origin⁵⁶. As of September 2021, Albania hosts 115 refugees and 1,528 persons at risk of statelessness⁵⁷. According to the 2021 European Commission Report for Albania⁵⁸, in August 2021, Albania started temporarily hosting evacuees/refugees from Afghanistan. Following a Council of Ministers decision adopted on 25 August 2021⁵⁹ under the asylum law as of end September close to 1150 were granted protection for one year pending security screening.

The increasing number of refugees underlines the importance of refugee education⁶⁰. This right must be fully accompanied by the proper legal framework to make international human rights law applicable, in order that the right to education should not be regarded as a commodity⁶¹. According to the Special Rapporteur on the right to education of

⁵² Decision no. 855, dated 29.12.2021, *on determining the minimum living conditions and social conditions for international protection applicants*, published on Official Gazette no. 206, dated 31.12.2021.

⁵³F. COOMANS, *Exploring the Normative Content of the Right to Education as a Human Right: Recent Approaches*, in *Persona y Derecho*, No. 50, 2004, pp. 61-100, p. 73.

⁵⁴ Art. 86, para. 1, c of the Law no. 10/2021, *on Asylum in the Republic of Albania*.

⁵⁵ UNHCR, *2005 UNHCR Statistical Yearbook Country Data Sheet – Albania*, 2005, available at <https://www.unhcr.org/statistics/country/4641835a13/2005-unhcr-statistical-yearbook-country-data-sheet-albania.html?query=albania>.

⁵⁶ INSTAT (Institute of Statistics), *Asylum Seekers in Albania. Year 2020*, available at <http://www.instat.gov.al/media/8680/asylum-seekers-in-albania-2020.pdf>.

⁵⁷UNHCR, *The UN Refugee Agency, Albania*, available at <https://www.unhcr.org/albania.html#:~:text=As%20of%20September%202021%2C%20Albania,migrants%20arriving%20in%20mixed%20movements>.

⁵⁸European Commission, *Albania 2021 Report*, 2021, accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2021 Communication on EU Enlargement Policy, available at https://ec.europa.eu/neighbourhood-enlargement/albania-report-2021_en.

⁵⁹ Decision no. 501, dated 25.08.2021 of the Council of Ministers, *for granting temporary protection to Afghan nationals and stateless persons, with temporary or permanent residence in the Islamic Republic of Afghanistan, and for the establishment of task-force for flow management of applicants for granting temporary protection*.

⁶⁰L. MORRICE, *The Promise of Refugee Lifelong Education: A Critical Review of the Field*, in *International Review of Education*, Vol. 67, 2021, pp. 851-869.

⁶¹United Nations, *The Right to Education of Migrants, Refugees and Asylum-Seekers. Report of the Special Rapporteur on the Right to Education*, A/HRC/14/25, para. 73.

2010⁶², the right to education is associated to free education which includes direct (fees, transport, textbooks) and indirect (opportunity) costs (foregone earnings and work-related learning).

Cases from the monitoring reports of the Ombudsman institution of Albania show that the right to education was provided for the children who were placed in the National Reception Centre for Asylum Seekers. Based on the monitoring of the Ombudsman Institution of Albania in the National Reception Centre for Asylum Seekers in 2014⁶³, it results that the institution through a signed agreement with the Ministry of Education provided for the right to compulsory education to the children located in the centre. During 2015, this right was extended to other levels of education such as secondary and higher education. However, there is no official data regarding the individuals who have benefited from this right and the steps taken by the state in terms of pedagogical and curricular aspects, linguistic diversity and teacher training.

The opening of the master study program in the Agricultural University of Tirana for the Afghans nationals, who granted protection for one year under the asylum law of Albania, constitutes another example on providing the right to higher education⁶⁴. Such a step directly related to the fulfilment of the right to higher education is necessary to extend in a systematic way to other asylum seekers and refugees.

Sporadic examples of the provision of the right to education show a tendency to fulfil the right to education for asylum seekers and refugees, not on equal bases for every asylum seeker and refugee, and not on the same terms as Albanian nationals. However, according to the migration strategy, refugees and aliens face difficulties in accessing education due to language barriers and administrative procedures⁶⁵. Moreover, the lack of official data issued by the state makes the assessment of the fulfilment of the right to education difficult.

4. Conclusions: The Responsibility of Delivering the Right to Education for Asylum Seekers and Refugees. Where Is It?

The international human rights law regarding the recognition and protection of the right to education is remarkable. The principles embedded in the international instruments and embraced by the states shape the national response on the right to education. Despite the recognition of the right to education in Albania for foreign citizens and stateless persons, without discrimination, the lack of secondary legislation in the implementation of the said right, makes it recognized but not a guaranteed right by the state. More than a fully organized right, the right to education of asylum seekers and refugees is not provided in

⁶²United Nations, *The Right to Education of Migrants, Refugees and Asylum-Seekers. Report of the Special Rapporteur on the Right to Education*, cit., para. 19.

⁶³The Ombudsman Institution, *Special Report. On the role of the Ombudsman Institution regarding the Migration issue*, 2016, available at <https://www.avokatipopullit.gov.al/media/manager/website/reports/On%20the%20role%20of%20the%20Ombudsman%20Institution%20regarding%20the%20Migration%20issue.pdf>.

⁶⁴Order no. 499, dated 23.12.2021 of the Minister of Education and Sport, *on the approval of the provision of professional master study program in "Advanced Technologies in Horticulture"*, even in English language at the Agricultural University of Tirana.

⁶⁵Albanian Ministry of Interiors, *National Strategy on Migration and Action Plan 2019-2022*, available at https://mb.gov.al/wp-content/uploads/2021/02/Strategjia-Komb%C3%ABtare-p%C3%ABr-Migracionin-dhe-Plani-i-Veprimit_2019-2022.pdf.

a standardized way, which constitutes the lack of full compliance of domestic law with the obligations arising from international treaties.

On the other hand, the European Court of Human Rights provides examples of best practices in this field. Regardless of the fact that it has not dealt directly with cases on the violation of the right to education of refugees or asylum seekers, in its jurisprudence, the Court has emphasized that the right to education must be offered equally, without discrimination and without nationality restrictions. The manner of treatment of the case law by the European Court of Human Rights serves as a reflection in the internal Albanian legislation to consider and include the appropriate implementing mechanisms to make the right to education of refugees feasible.

The reflection of the practice of the European Court of Human Rights requires the construction of clear provisions not only in terms of the law on asylum, but in a comprehensive manner in terms of laws in the field of education, to achieve the improvement of the legal framework in force. The implementation system should be equipped by the administrative governmental bodies with specific competences and obligations in the field of education and by proper standards and guidelines that foresee financially feasible measures from the state budget.

The right to education of asylum seekers and refugees provided for in the domestic legislation needs to be in coherence with international human rights law in terms of guaranteeing this right at all levels of education. On the other hand, the lack of instrumental legal framework deprives the right of its implementation, being satisfied only with its recognition in the legislation.

In conclusion, it is necessary for the state to consider that the right to education is known to all, at international and national level. As such, it is necessary to be associated with advancing mechanisms for fulfilling the objectives of universality and the unlimited enjoyment of this right.

ABSTRACT

This article aims at shedding light on the protection of the right to education of asylum seekers and refugees in consideration of international human rights law, in order to better assess the sanctioning of this right in the Albanian legislation throughout the transition period. The article is firstly focused on the international human rights law and instruments which describe the international protection of the right to education. Through the analyses of the sources of law, it then provides the legal background of the Albanian standards towards recognition, protection and realization of the right to education of asylum seekers and refugees. By analyzing the level of legal sanctioning of this right in the normative aspect, the analysis of the right to education shows that its implementation is mainly connected to the compulsory education, by reducing the possibility of exercising this right for other levels of education. At the end, the article will answer the research questions, by highlighting the extent of the protection of the right to education in international law, and the extension of this right in the Albanian legal framework, seen under the light of international human rights law.

KEYWORDS

Albania, Asylum Seeker, International Standards, Refugees, Right to Education.

IL DIRITTO ALL'ISTRUZIONE DEI RICHIEDENTI ASILO E DEI RIFUGIATI:
LE CONSEGUENZE DEGLI STRUMENTI E STANDARD INTERNAZIONALI
NELLA LEGISLAZIONE ALBANESE

ABSTRACT

L'articolo si propone di far luce sulla tutela del diritto all'istruzione dei richiedenti asilo e dei rifugiati in considerazione del diritto internazionale dei diritti umani, al fine di valutare meglio la definizione di questo diritto nella legislazione albanese durante tutto il periodo di transizione. L'articolo si concentra in primo luogo sul diritto internazionale dei diritti umani e sugli strumenti che descrivono la protezione internazionale del diritto all'istruzione. Attraverso l'analisi delle fonti del diritto, verrà poi introdotto il contesto legale delle norme albanesi volte al riconoscimento, tutela e realizzazione del diritto all'istruzione dei richiedenti asilo e dei rifugiati. Analizzando il livello di definizione giuridica di tale diritto sotto l'aspetto normativo, l'analisi del diritto allo studio mostra che la sua attuazione è principalmente connessa alla scuola dell'obbligo, riducendo la possibilità di esercitare tale diritto circa altri livelli di istruzione. Nella sua parte conclusiva, l'articolo risponderà alle domande della ricerca, evidenziando la portata della tutela del diritto all'istruzione nel diritto internazionale, e l'estensione di questo diritto nel quadro giuridico albanese alla luce del diritto internazionale dei diritti umani.

KEYWORDS

Albania, Diritto all'istruzione, Richiedenti asilo, Rifugiati, Standard internazionali.