

LABOUR MOBILITY REGULATION IN SOUTH-EAST EUROPE

Legislative assessment report

UNSC resolution 1244-administered Kosovo¹

¹Hereinafter referred to as Kosovo/UNSCR 1244



IOM Development Fund
DEVELOPING CAPACITIES IN MIGRATION MANAGEMENT



International Organization for Migration (IOM)

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The research team produced seven separate reports for Albania, Bosnia and Herzegovina, Croatia, former Yugoslav Republic of Macedonia, Montenegro, Kosovo/UNSCR 1244, Serbia and one regional overview. The seven reports looked at the policies and regulative mechanisms which govern labour mobility, in terms of their approaches in facilitating movements of specific categories of migrant workers, consistency with evolving regional objectives and compliance with the EU *acquis* and standards. The regional overview presented an overall framework for regulating labour mobility from the perspective of existing international and regional norms and their relevance to the South-Eastern European (SEE) region. The regional overview explored the degree of harmonization of existing regulative frameworks within the SEE region and their coherence with the increasing labour market integration and overall socioeconomic development at national and regional levels.

The IOM study was carried out in close coordination and partnership with the Regional Cooperation Council (RCC), whose labour mobility study conducted in 2014 complements IOM’s legal assessment by looking at labour mobility from the socioeconomic perspective. It is the expectation that both IOM and RCC reports will help the governments in the region in operationalizing the South-East Europe 2020 Strategy adopted in 2013, which specifically foresees a common regional action on facilitating labour mobility as a tool towards stronger economic growth and closer integration with the EU. The initial consultations for such a common regional action took place in the SEE region in October 2014 within the framework of the RCC Working Group on Social Agenda, where representatives of various stakeholders expressed their views on possible topics and modalities of regional cooperation, including ministries of labour, education, interior, health, trade, chambers of commerce, business/employer association, trade unions, statistical offices, public employment services. The international partners and the governments in the region are committed to continuing the consultations to ensure that the proposed regional initiative addresses the needs in the region in the most effective, collaborative and realistic manner.

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List of abbreviations

DCAM	Department of Citizenship, Asylum and Migration
EALI	Executive Agency of Labour Inspectorate
EU	European Union
IOM	International Organization for Migration
KAS	Kosovo Agency of Statistics
MEI	Ministry of European Integration
MEST	Ministry of Education, Science and Technology
MFA	Ministry of Foreign Affairs
MIA	Ministry of Internal Affairs
MLSW	Ministry of Labour and Social Welfare
MTI	Ministry of Trade and Industry
NARIC	National Academic Recognition Information Centre
NQF	National Qualification Framework
OSCE	Organization for Security and Cooperation in Europe
PES	Public Employment Service
SEE	South East Europe
UNHCR	United Nations High Commissioner for Refugees

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1.0. Introduction

Migration has been a phenomenon of the society of Kosovo/UNSCR 1244 for ages and is rooted in its history and tradition. The characteristics of migratory population have changed over the time. Those who left before the war, mostly around 1960s, were mainly low skilled youth leaving for work, whereas the migration wave of 1980s was mostly composed of professionals and students due to repressive policies and measures applied to these categories by the Milosevic Regime. During that time, middle and low skilled Kosovars migrated to better-off parts of the South-East European region and ex-republics of Former Yugoslavia, such as Montenegro, Slovenia, and Croatia.

During the conflict time, the outmigration from Kosovo/UNSCR 1244 to the neighbouring countries mainly involved forced displacement, when people moved primarily to Albania (around 45 per cent), former Yugoslav Republic of Macedonia (around 30 per cent) and Montenegro (around 15 per cent).¹

The situation became slightly different during the post-conflict era. First, the large presence of international organisations in Pristina resulted in a temporary labour migration inflow into Kosovo/UNSCR 1244, mainly of highly skilled professionals from Albania and other Western Balkans countries. Secondly, outmigration from Kosovo/UNSCR 1244 nevertheless continued. The majority of low and semi-skilled workers who were leaving Kosovo/UNSCR 1244 did that in breach of legal procedures, whilst the students and well educated people found ways to get employment abroad either in international organizations or in the private sector.

A relatively post war liberal wage determination system in Kosovo/UNSCR 1244 has promoted labour mobility. In contrast to some successor countries of the Former Yugoslavia (for example, Bosnia and Herzegovina and Slovenia), its liberal, flexible wage determination system has spurred labour mobility and produced only a small wage gap between men and women. Moreover, labour demand has been stimulated by small tax wedge on the use of labour, which has helped keeping a non-segmented labour market.²

Kosovo/UNSCR 1244 has a centralized government structure and as such legislation and policy affecting employment of foreign nationals are developed by the state ministries in charge and further enforced by local governments/authorities. The legal framework directly or indirectly regulates the issue of migration on its territory. As mentioned in state strategy on Migration and Action Plan 2013-2018 and based on the roadmap for visa liberalization, the legislation is in process of being harmonized in accordance with the EU legislation regarding to the issue of migration and asylum. Authorities are aware that the harmonization of legislation is a key element in implementing the common policy on migration and ensuring efficient management of migration³ in all of its stages and areas, including proper treatment of third country nationals with regular residency” and preventing and counteracting irregular migration and trafficking in human beings.

Taking into consideration the close relation between migration and economic development, the Government of Kosovo/UNSCR 1244 has drafted laws and policies focused on entry and residency of foreigners and their integration into society. Measures regulating legal migration deal with conditions of entry and residency for some categories of migrants, such as highly qualified professionals, students and scientific researchers. These measures also cover family reunification and the long-term residency.

However, despite the significant impact of migration on the economic, political and social landscape of Kosovo/UNSCR 1244, policies to maximize its contribution to the economic development have been minimal at best. In 2009, the Government adopted the National Strategy and Action Plan on Migration for 2009–2012⁴, but it primarily concerned irregular migration and administration of returning refugees, with the implementation falling largely under the Ministry of Interior. No government strategic document contains policies that recognize the economic aspects of regular migration.

The objectives of this study are both to explore current regulative approaches to international labour mobility in Kosovo/UNSCR 1244 and the degree of law harmonization with the EU standards and practices. To conduct the study, the officials of the Ministry of Internal Affairs, the Ministry of Labour and Social Welfare, the Ministry of Diaspora, and the Kosovo Agency of Statistics were consulted.

2.0. Regulative framework and its alignment with the EU *acquis*

2.1. Overview of main policies governing labour mobility in the country

The National Strategy and Action Plan on Migration (2009-2012) adopted for the first time in Kosovo/UNSCR 1244 were two first strategic documents that clearly expressed the Government's commitment to fight and prevent all forms of irregular migration and to promote regular and circular migration. Already the Strategy and Action Plan (2009–2012) set out the ambitious objective of increasing the contribution of migration to its economic development. However, neither document specified concrete measures how migration could become a positive developmental vehicle in practice. Instead, they focused more on political aspects of migration, such as returning refugees and other Kosovars who had temporarily stayed abroad.

The new State Strategy on Migration for 2013-2018, which was adopted in September 2013, addresses the commitment of the Government to prevent irregular migration and reinforces the regular migration by advancing and facilitating regular migration and at the same time turning migration into a positive factor of economic development.⁵ The Strategy restates the importance of promoting regional and international cooperation in order to identify common priorities and address common challenges in order to promote bilateral and regional management of migration. The State Strategy on Migration is in line with the Constitution, national legislation and international law¹, including EU *acquis* and EU migration policy frameworks, in particular the European Pact for Immigration and Asylum. The current Strategy for Migration is accompanied by the Action Plan, which spells out specific activities that are planned to be completed within the five year period, 2013 – 2018.

The Government of Kosovo/UNSCR 1244 developed several other documents along with the State Strategy for Migration which address specific categories of migration, complementing the overall Strategy in a coherent manner, such as: the National Strategy for Reintegration of Repatriated

¹ Due to its special status, Kosovo/UNSCR 1244 cannot be party to main international law instruments. Nevertheless, its Government is taking considerable efforts in ensuring that the national legislative framework, including on migration management, remains compliant to international standards and EU *acquis*.

Persons⁶, the National Strategy on Integrated Border Management 2012 – 2017⁷ and the National Strategy and Action Plan against Trafficking in Human Beings 2011 – 2014.⁸ In addition, the broader crime-prevention related documents, such as the National Strategy and Action Plan against Organized Crime 2012 – 2017⁹ and the National Strategy for Crime prevention and Action Plan 2012-2017¹⁰ similarly contain relevant measures concerning irregular migration counteraction.

There are no strategic documents focusing specifically on (regional) labour mobility. However, the current State Strategy and Action Plan on Migration recognize migration as a potential positive factor that can contribute to economic development and include regular migration and labour mobility as one objective to be achieved. Specifically, in the section “Future policies”, part 7.6. “Migration, Development and Integration Policies”, the Strategy states that Kosovo/UNSCR 1244 will... ..make further efforts in integration of foreign citizens and this integration policy shall be linked to the market demand for labour. [...] Cooperation between countries of origin and transit countries shall strengthen through encouragement and signing of partnership agreement and through the circular migration. [...] Efficient cooperation mechanisms shall be established between Ministry of Education, Science and Technology with universities with the purpose to attract qualified migrants”.¹¹

The other strategic documentsⁱⁱ, such as National Strategy on Integrated Border Management as well do not treat regional labour mobility particularly and separately from other forms of migration.

2.2. Key institutions involved in labour mobility regulation and their main functions

The responsible institutions for monitoring and implementation of the current policy on migration include several governmental entities, all with detailed duties and responsibilities as following:

The National Coordinator for Migration is an individual body responsible for coordination, monitoring and reporting of implementation of policies and activities foreseen within the Strategy for Migration.ⁱⁱⁱ The Deputy Minister, who performs among others the function of the National Coordinator for Migration, is part of the Ministry of Internal Affairs. The Secretariat for Migration oversees the collection of data and reports from other institutions in order to analyse and evaluate them and prepare reports for the National Coordinator. The Secretariat is appointed by the National Coordinator and is also part of the Ministry of Internal Affairs.

The Ministry of Internal Affairs (MIA) - In accordance with its legal competences, the MIA plays a leading role in implementing and coordinating the administration of migration.

The MIA regulates and controls the migration of foreigners staying in Kosovo/UNSCR 1244. The Department for Citizenship, Asylum and Migration (DCAM) within the Ministry, processes applications for residence permits including those for work purposes in consultation with Ministry of Labour and Social Welfare. The Division for Foreigners, Visas and Stay Permits within the DCAM is responsible for processing stay permits, and it is part of the decision-making process with regard to issuance of visas. Applications for a residence permit for the purpose of employment have to be filed at the DCAM in Pristina. Migrants originating from the countries where visa restrictions are

ⁱⁱ Other supporting and interrelated documents for the National Strategy on Migration of Kosovo/UNSCR 1244 are two strategic documents: National Strategy on Integrated Border Management (IBM), and National Strategy against Trafficking in Human Beings and their respective Action Plans.

ⁱⁱⁱ Please, see the structure chart at p.9 of document on key institutions involved in labour mobility

applicable, have to apply for residence permits at the Consulates of Kosovo/UNSCR 1244. Within the South East European region this modality is applicable for citizens of Bosnia and Herzegovina who have to apply at the Consulate of Kosovo/UNSCR 1244 in Albania.

A separate Government Authority to Monitor Migration Flows and develop and update the yearly migration profile has been established by Government decision No. 08/158 adopted by the Government on 29 November 2013 and signed by the Prime Minister. This separate authority within MIA must monitor the implementation of the Strategy and will report to the National Coordinator for Migration which operates as a link between respective institutions, local authorities and nongovernmental sector involved in migration administration. It is an inter-ministerial body chaired by the MIA.

The Ministry of Foreign Affairs (MFA) - MFA has competencies in the area of migration and those are related to reinforcing the visa regime. The Department for Consular Affairs within the MFA, as a central authority, also has the Visa Information Centre in place. According to the national legislation, diplomatic and consular missions are responsible for issuing visas. There are exceptions from these general rules in extraordinary cases. Moreover, this Ministry is one of the key actors in negotiating and implementing agreements for readmission.

The Ministry of Education, Science and Technology (MEST) - With a decision from the Government, the MEST has established a National Programme called "Brain Gain". This program aims to bring back intellectuals from abroad, by offering good incentives and opportunities for professional development in Kosovo/UNSCR 1244. The MEST also operates several programmes for students abroad that help them to successfully complete their studies through different schemes of scholarship and grants. These schemes are enabled via bilateral agreements with different countries and aim at attracting foreign students through summer and other academic courses.

The Ministry of Labour and Social Welfare (MLSW) – is responsible for developing and implementing policies regulating foreign citizens' access to the labour market; elaboration and implementation of bilateral agreements for employment and agreements for social insurance with other countries, though no such agreement has reached at this time; assisting citizens abroad as well as foreigners working in Kosovo/UNSCR 1244 to safeguard their social rights, and coordination of the policy for integration of persons from other countries. In addition, the MLSW also offers employment opportunities for foreigners, based on the criteria foreseen by the law in force about the employment of foreigners. This Ministry is involved in reaching agreements regulating seasonal employment.

Besides the above responsibilities, via its specialized departments, such as the Department of Social Policy and Families, the Department of Labour and Employment, and Social Work Centres under Municipality responsibilities, the MLSW also implements policies and provides services for the protection, reintegration as well as employment and training opportunities for repatriated persons.

The **Department of Labour** is responsible for the implementation of policies for labour market protection and admittance of citizens from other countries for employment. The Department, through its regional offices, registers foreign job seekers in Kosovo/UNSCR 1244.^{iv}

^{iv} The new law no. 04I/L-205 on Kosovo Employment Agency will be implemented as of 1 January 2015.

The Ministry of Trade and Industry (MTI) - the European Integration and Policy Coordination Department of the Ministry of Trade and Industry provides support in harmonization of relevant legislation with the EU *acquis communautaire*; the Department of Trade has set committees to implement the CEFTA agreement and to adjust legal provision for mobility of workers from other CEFTA Parties.

The **Ministry of European Integration (MEI)** – The Ministry monitors the quality and ensures regular reporting on the implementation of the Action Plan for European Partnership, the Action Plan on the Feasibility Study, and other basic documents related to the process of the European integration including the developments in the migration field, such as labour mobility, which are deemed to be very important.

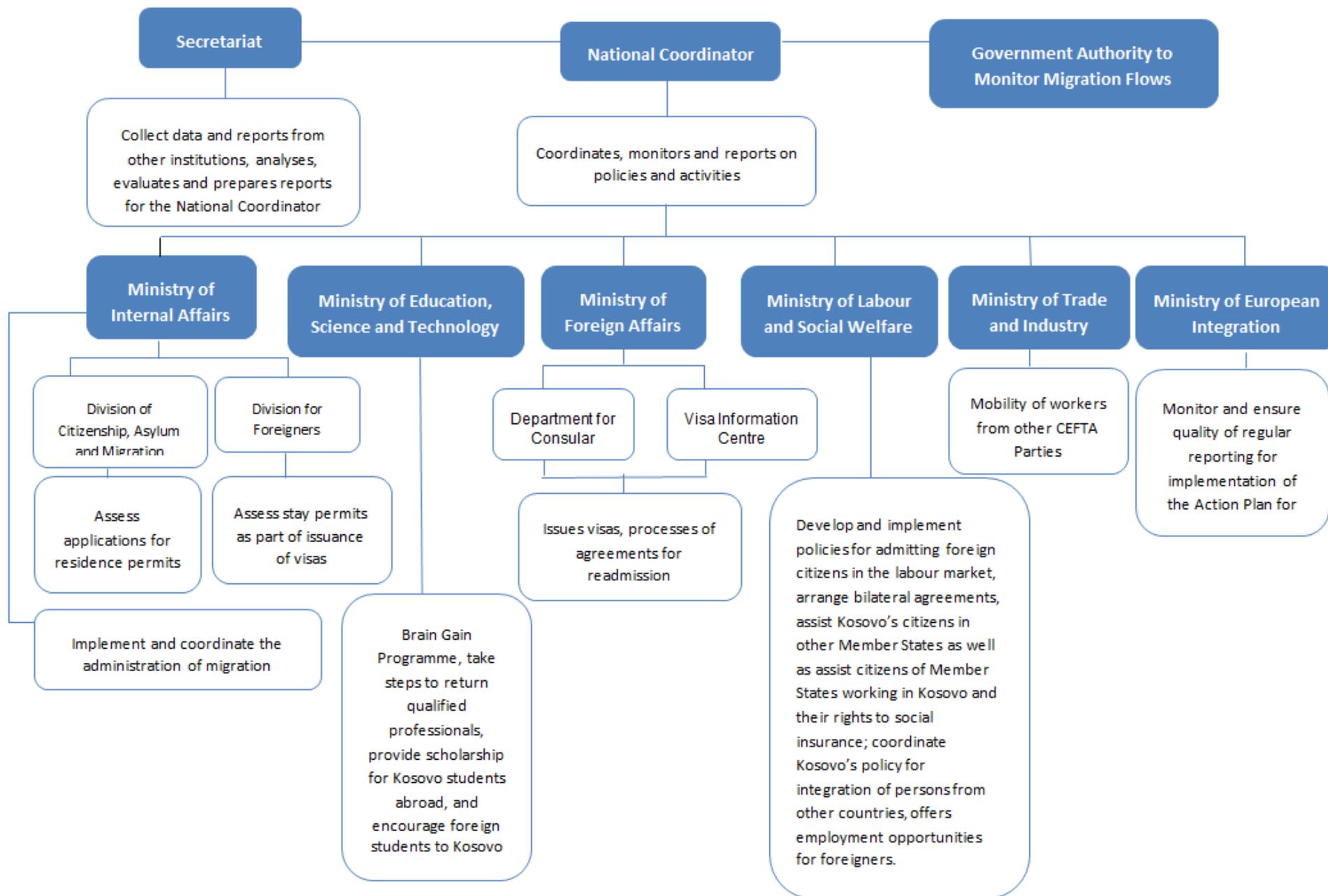


Figure 1. Institutional Mechanisms for Labour Mobility and Migration Management, Kosovo/UNSCR 1244

2.3. Regional framework regulating labour mobility to and out of the country

There are no regional agreements covering labour mobility or seasonal employment within SEE region, which Kosovo/UNSCR 1244 is a party to. The only bilateral agreements in force are those on pension transfers that Kosovo/UNSCR 1244 has signed with former Yugoslav Republic of Macedonia and Montenegro. These agreements cover the aggregation and transfer of pension contribution between countries enabling the implementation of the right to retirement.

For countries outside of the SEE region, Kosovo/UNSCR 1244 signed two agreements with Lichtenstein (2011) and Switzerland (2012) for sending seasonal workers, providing education and training, and protecting migrant labour rights. Scholars and artists from Kosovo/UNSCR 1244 can also apply for Swiss Government Excellence Scholarships managed by the State Secretariat for Education and Research.

Return and repatriation have been significant migratory movements during the post-conflict 'era' in Kosovo/UNSCR 1244, although this has ranged from voluntary return, based on fully-informed free choice, to 'forced' return, or the removal or deportation of those who have been denied refugee or residence status in a third country. Mutual recognition of expulsion orders has been bilaterally regulated by readmission agreements signed between Kosovo/UNSCR 1244 and SEE countries. Agreements on expulsion and readmission of persons who illegally entered or resided in signatory countries were signed and promulgated by law in 2013 with the Government of Croatia, Albania and Montenegro.

According to EU progress report (2013) twenty-one countries are now covered by bilateral readmission agreements.¹²

Kosovo/UNSCR 1244 signed an agreement on police cooperation with the Swiss Federal Council, with the purpose to strengthen cooperation in the fight against organized crime, trafficking in human beings, trafficking in weapon, narcotics substances etc. In addition, such a bilateral agreement on police cooperation was signed with Hungary in July 2013 and the agreement in security field - with Finland in October 2013.

2.4. National framework regulating labour mobility to and out of the country

In recent years, the Government of Kosovo/UNSCR 1244 has developed various standards and legislative acts directly or indirectly regulating most types of migration-related areas, including those related to labour, and social protection of migrants.

The legislation in Kosovo/UNSCR 1244 consists of:

- Laws promulgated by UNMIK; and
- Laws following the 2008 unilateral declaration of independence.

The list of most important laws and administrative instructions related to migration is as follows:

- Constitution,
- Law on Integrated management and control of the state border ((Nr. 03/L-065)¹³,

- Law on Asylum (No. 04/L-217)¹⁴,
- Law on Foreigners (04/L-219)^v which replaced the Law NO. 03/L-136 on granting the permit of work and employment of foreign citizens¹⁵,
- Law (No. 04/L-215) on Citizenship¹⁶, This Law is applicable together with the UNMIK Regulation no.2005/21 of 07.05.2005
- Law on Civil Registers¹⁷,
- Law on Dwelling and Emplacement,¹⁸ Law is approved by Assembly of Kosovo/UNSC 1244, date 27 September 2007 and promulgated by UNMIK Regulation no. 2008/14 of date 17 March 2008
- Law on Labour No.03/L –212¹⁹,
- Law for Prevention and Fight of Trafficking in Human Beings, and Protection of the Victims of Trafficking No. 04/L-218,²⁰
- Administrative instruction (MIA) no. 22/2013 on the conditions and procedures of the visa extension,²¹
- Administrative Instruction (MIA) no. 24/2013 on refusal of entry.²²
- Administrative Instruction (MIA) No. 01/2014 on the procedure of issuance of residence permits for foreigners and the certificate for notification of work.
- Law (no. 04/L-205) on Kosovo Employment Agency will be implemented as of 1 January 2015.

The Constitution was signed on 7 April 2008 and came into effect on 15 June 2008, acting as supreme law (article 16) in Kosovo/UNSCR 1244 and guiding its overall legislation and political culture. The authors were influenced mostly by two documents: the Ahtisaari plan and the United Nations Security Council Resolution 1244, which was the base document for a period from 10 June 1999. Article 7 proclaims the main values and freedoms to be the rule of law, equality, including gender equality, respect and social justice and the neutrality towards religion (Article 8).

The adoption of a new Law on Foreigners, No. 04/L-219, in 2013^{vi}, introduced a number of changes, such as the issuance of work permits for foreign citizens in Kosovo/UNSCR 1244 according to one single unified procedure for issuance of residence for work without a need for further procedures. Also, the new law simplifies the procedure for voluntary departure order, forcible removal and the imposition of fines for foreigners. This Law also strengthened the regulation of trafficking of foreigners in Kosovo/UNSCR 1244.

Articles 67 to 83 of the Law regulate conditions of entry, movement, residence and employment of foreigners in the territory of Kosovo/UNSCR 1244. By entering into force, the earlier Law on granting residence and work permit to foreigners was abrogated.²³

^v Law on Foreigners is amended three times. The first law on Foreigners No. 03/L-126 is approved by Assembly, date 16.12. 2008 and promulgated by the Decree of the President No. DL-069-2008, date 30.12.2008. The Second Law on Foreigners No.04-L-069is approved by Assembly, date 21.12.2011 and promulgated by the Decree of the President No.DL-056-2011, Date 30.12.2011. Existing Law on Foreigners 04-L-219is approved by Assembly, date 31.07.2013, and promulgated by the Decree of the President No.DL-42-2013, Date 19.08.2013

^{vi} Law is approved by Assembly, date 31.07.2013, and promulgated by the Decree of the President No.DL-42-2013, Date 19.08.2013

Nine administrative acts are approved pursuant to the new Law. The provisions of this Law relating to the stay of foreigners are not applicable to members of diplomatic missions and consular posts, members of the missions of the UN and related organizations, members of the missions of international organizations accredited in Kosovo/UNSCR 1244 and members of their families or households.

Compliance with UN/International standards

As yet, Kosovo/UNSCR 1244 has not formally acceded to any international conventions not being a UN Member State. Article 22 of the Constitution indicates that the Constitution itself makes provisions of international conventions and instruments directly applicable to Kosovo/UNSCR 1244's legislation framework, with the international principles prevailing over the domestic laws. Article 19 refers to the applicability of *ratified* agreements, if any. As such, Kosovo/UNSCR 1244 is following one of the three methods for transposing international legal standards^{vii} into the domestic law: (1) direct incorporation of rights recognized in the international instruments into what may be termed a "bill of rights" in the national legal order, meaning that each law indicates in its general provisions that the rights and obligations according to international standards/conventions shall not be affected/violated by law²⁴. For instance, the Law on Foreigners states in article 3 of its general provisions that: "nothing in this law shall affect the rights, obligations and responsibilities of authorities and individuals under international law, including international humanitarian law and international human rights law and, in particular, the 1951 Convention and the 1967 protocol relating to the status of refugees, the principle of non-refoulement and the right to seek asylum as contained therein".

Following the above, Kosovo/UNSCR 1244 Government strives to live up to the international norms concerned, including the general human rights conventions, ILO conventions, and also the main refugee, statelessness and migration instruments. The international norms and principles or relevance to migration that have been incorporated into the national legislation are the following, but not limited to:

1. Universal Declaration of Human rights;
2. Geneva Convention on Refugees Protection;
3. New York Convention on Stateless Persons;
4. United Nations Conventions on Elimination of All forms of Discrimination Against Women;
5. United Nations Convention against Torture and other Cruel, Inhumane or Degrading Treatments and Punishments, 1984;
6. European Convention for the Defence of Fundamental Human Rights and Freedoms and the Protocols thereto;
7. United Nations Convention on the Rights of the Child;
8. International Convention on Civil and Political Rights and the Protocols thereto;

^{vii} Three main methods are available to implement international legal instruments in domestic law:(1) Direct incorporation of rights recognised in the international instrument into what may be termed a "bill of rights" in the national legal order.(2) Enactment of different legislative measures in the civil, criminal and administrative laws to give effect to the rights recognized in international legal instruments.(3) Self-executing operation of international legal instruments in the national legal order.

9. UN Convention on the Rights of Migrants and Members of Their Families.²⁵

The Law on Labour is framed by fundamental labour standards (Sections 2-7 and 12) promulgated in international conventions of the International Labour Organization. It guarantees an internationally recognized minimum standard for protection of employees and employers' rights. The provisions safeguarding their fundamental rights are: the prohibition of all kinds of discrimination; a minimum age for admission to any type of employment; the prohibition of child labour and forced labour; rights to self-organize and to collective bargaining; protection against acts of anti-union discrimination; and equal pay between women and men.

Compliance with European norms and EU *Acquis*

Kosovo/UNSCR 1244 is as yet not a member of the Council of Europe (CoE) and is therefore not a party to the CoE instruments. On June 11 2014, Kosovo/UNSCR 1244 joined the Venice Commission, one of the institutions of the Council of Europe, a year after joining the Council of Europe Development Bank.

In addition to the CoE norms, Kosovo/UNSCR 1244 is developing its respective legislation regulating entry, stay, residence, work and return procedures for foreigners and asylum seekers striving for compliance with EU standards and directives. Kosovo/UNSCR 1244's legal system is based on the continental law tradition, whereby court decisions are generally not considered as precedents, although lower courts tend to follow the opinions and rulings of higher courts.

On 5 December 2011, the European Council reaffirmed that Kosovo/UNSCR 1244 would benefit from the perspective of an eventual visa liberalisation once all conditions are met and without prejudice to Member States' position on status.²⁶

In the framework of the visa dialogue, amongst the other requirements Kosovo/UNSCR 1244 is requested to adopt and implement legislation on legal migration in accordance with the EU *acquis*, notably, the Single Permit Directive (Directive 2011/98/EU), the Directive on the conditions of admission of third-country nationals for studies and training (Directive 2004/114/EC), the Directive on admitting third country nationals for research (Directive 2005/71/EC), the Directive on the right to family reunification (Directive 2003/86/EC), the Directive on long-term residents (Directive 2003/109/EC) and the Blue Card Directive (Directive 2009/50/EC).²⁷

Legal migration as a part of freedom of movement is one of the basic rights guaranteed by the Constitution of Kosovo/UNSCR 1244, and the Government shows determination to approve and implement legislation on legal migration in accordance with the international and EU legislation. The new Law on Foreigners 04/L-219 is a comprehensive legal act which can be considered in many aspects aligned with the EU directives and international standards.²⁸ Nevertheless, further approximation with the EU *acquis* is necessary, specifically in terms of social rights of irregular migrants (access to health, social services and education) or extending the right to self-employment to other categories of foreigners, not only long-term residents and family members.

The Labour Law 03/L-212²⁹ aims to establish a comprehensive, functional and sustainable legal basis for employment relationship in Kosovo/UNSCR 1244 in general.³⁰ In the provision part of the Labour Law, it is stipulated that the act is drafted based on Articles 65 (1) and 49 of the Constitution, taking

into account the European Union Legislation and the fundamental principles of free labour market and economy.³¹

The existing Labour Law No.03/L –212 aims to regulate the rights and obligations between employers and employees in the private and the public sector. In Kosovo/UNSCR 1244, the arrangements for employment do not derive from the Labour Law alone. In 2001, UNMIK issued Regulation 2001/27 for the Basic Labour Law which included a considerable amount of articles that are now founded the new law. The existing Labour Law, which consists of 100 articles, has taken into consideration a range of requirements demanded by the trade unions. Thereby the law includes articles stating for example that the employment contract must be offered in written format only and that the probation period cannot last more than 6 months. Furthermore, it formalizes the 40 hour work week, suggests employees must be given the right to have a break of at least 30 min, and gives employees 4 weeks of vacation per year.

Employees of foreign investors are subject to the same laws (applicable in Kosovo/UNSCR 1244) to which employees of Kosovar enterprises are subject. Foreign investors are entitled to employ staff of any nationality but the Law on foreigners requires them to apply for a Work Permit.

According to article 9 of this law “Foreign and stateless persons inside the Republic of Kosovo 1244 establish employment relationship on the basis of this Law, under the terms and criteria defined with a special Law³² on the employment of foreigners and on the basis of international conventions”.

2.4.1. General access of foreigners to labour market

As per previous Law on Foreigners in order to be provided with work and residence permit, there were required some bureaucratic procedures, considering the fact that the Labour directorate within the Ministry of Labour and Social Welfare was the competent authority for the work permits and in order to be provided with Residence Permit the foreigners should have applied with the Ministry of Internal Affairs. Taking into account the fact that this was a lengthy procedure and caused problems to foreigners intending to properly regulate the conditions for entry, movement, residence and employment in the territory of Kosovo/UNSCR 1244. To address this, the new law on foreigners, described below, foresees that a foreigner in Kosovo/UNSCR 1244 may work on the basis of a residence permit issued for the purpose of employment^{viii} by the MIA or a certificate for employment notification.³³ Residence for employment may be issued on the basis of an annual quota or separate to it. On the basis of the certificate for employment notification, a foreigner may work for the same employer or recipient of the services, in the entire territory of Kosovo/UNSCR 1244.

The new Law on Foreigners 04/L-219 is the key legislation regulating conditions for foreigners’ entry, residence or stay for the purpose of employment in Kosovo/UNSCR 1244. There is no distinction concerning treatment of foreign nationals depending on whether they come from the SEE countries, EU Member states or other countries. In regard to employment and self-employment of migrant workers, as a general rule, the law provides that a foreigner cannot work without a work permit.

^{viii} Types of work permit in Kosovo/UNSCR 1244 are: B-Employees; G-Employers; D-Self-employed; A-Seasonal; F- Students

A foreigner may be allowed to enter Kosovo/UNSCR 1244 for stay not exceeding three months within six-month period, provided that he/she possesses a valid travel document; a valid visa or a residence permit, when required; justifies the purpose, the conditions of entry and residence and proves to have sufficient means of subsistence; and does not constitute threat to state security, public order and public health in Kosovo/UNSCR 1244.

In comparison to the previous version of the law, the new Law on Foreigners 04/L-219 ensures a harmonized fast-tracking procedure and common criteria for highly skilled workers, whose application for residence permit is to be processed within 30 days. Previously, the procedures for granting residence permits were separate from work permit procedures, and the approximate time of the whole procedure was over 100 days. Having consulted the new law and experts during interviews conducted for the production of this report the conclusion is that the improvements in the new Law now ensure full compliance with EU Directive 2011/98/EU on **Single Application Procedure for Single Permit**.

Foreigners will have to prove that they have necessary qualifications to fill in the job position and the company will have to justify need to hire foreign citizen. Foreign citizens seeking employment in Kosovo/UNSCR 1244 will have to also prove clear criminal record from the home country or country of latest residence. Those regulations bring procedures in Kosovo/UNSCR 1244 in line with procedures present in other EU countries, where companies must justify the need for employees from other countries.

Types of residence in Kosovo/UNSCR 1244 are:

1. Short-term residence is a residence of a foreigner up to three (3) months within the period of six (6) months without visa or with visa, if required

2. Temporary residence shall be granted to a foreigner who resides or his/her intention is to residence in the territory of Kosovo/UNSCR 1244, for the purpose of:

- family reunification;
- secondary and higher education;
- scientific research;
- humanitarian grounds, including refugees, persons under subsidiary protection and victims of human trafficking or victims of migration, smuggling and foreigners who have willingly expressed cooperation with competent authorities;
- employment
- employment of a posted worker

Temporary residence permit is issued for a period of one (1) year unless otherwise is specified under the Law on Foreigners. A temporary residence permit application shall be submitted to a diplomatic or consular mission of Kosovo/UNSCR 1244 or for Foreigners for whom to enter Kosovo/UNSCR 1244 do not need a visa, may apply for temporary residence permit in the DCAM.

3. Permanent residence may be granted to a foreigner who at the time of submission of the application has a temporary residence permit continuously for a period of five (5) years in Kosovo/UNSCR 1244.

A foreigner with a permanent residence or a refugee status or temporary or subsidiary protection it is exempted from a work permit or a certificate for employment (Article 67).

2.4.2. Labour Market protection mechanisms and measures ensuring preferential treatment of national labour force

The Law on Foreigners foresees the establishment of quotas according to the economic activity and occupation, to be adopted for the first time in 2014 by 31 October.

Migrants can access the labour market either through quota or outside the quota system. A foreigner may work in Kosovo/UNSCR 1244 only in those jobs for which the residence permit for work or the certificate for employment notification has been issued, and solely with the employer with whom the initial employment relationship was established.

Conditions for annual quota (Article 69) there are: evidence of employment, education and business registration. Conditions and requirements outside annual quota (Article 71) to access labour market there are: evidence of employment, education, business registration and justification on deficit skills and the reasons why the workplace cannot be filled by the workforce from the labour market in Kosovo/UNSCR 1244.

Current regulations in the field of regional mobility in Kosovo/UNSCR 1244 consist of Residence and Work Permit regulations and Law on Foreigners and Law on Labour.³⁴

According to Article 44 of Law on Foreigners 04/L-219³⁵ "Against the decision to refuse a temporary residence permit for work due to the completion of the annual quota for employment, or if the annual quotas for the continuation of valid permits, new employment or seasonal employment, still has not been set out, the foreigner has no right to appeal" but can initiate an administrative dispute at First Instant Court.

According to Article 70 of Law on Foreigners 04/L-219 work permits outside the annual quota may be issued to:

1. daily immigrants on the condition of reciprocity;
2. key personnel, service providers, employees and their family members, whose
3. status is regulated by the Stabilisation and Association Agreement;
4. a foreigner working in private companies which are subcontractors to diplomatic missions in Kosovo/UNSCR 1244;
5. a foreigner who perform major duties for trade companies, associations and representations;
6. a foreigner who is transferred within the internal transfer of staff within trade companies and other personnel required determined in advance under the contract;
7. a foreigner who is self-employed in its own trade company or trading company, having a greater share than fifty-one percent (51%) or turnover of its own;
8. teachers who teach in educational institutions in one of the languages of ethnic minorities;
9. professional athletes or sports activists who work in Kosovo/UNSCR 1244;
10. artists working in cultural institutions in Kosovo/UNSCR 1244;

11. foreigners who have established employment relationships in corporations, which are registered as a foreign corporation in Kosovo/UNSCR 1244 and at least in three (3) countries;
12. foreigners working under Youth Mobilization Program;
13. scientific researchers, foreigner employed to scientific positions and research jobs foreign language professors, lecturers and other teachers who teach in higher educational institutions in Kosovo/UNSCR 1244 or in registered foreign languages schools and
14. foreigners working on the basis of international contracts.³⁶

2.4.3. Access to labour market of specific categories of foreigners

According to the Law on Foreigners the SEE citizens do not enjoy any particular privileges either in accessing the Kosovo/UNSCR 1244 labour market or in obtaining residence status comparing with foreigners outside SEE area. The provision of the Law defines the specific categories of foreigners for employment reasons.

Cross border workers

Daily migrants or cross-border workers are exempted from the obligation to obtain a work permit within the quota system, but only on the condition of reciprocity and outside the annual quota, as per Art. 70 of the Law on Foreigners. Daily migrants are *not* eligible to obtain a permanent residence status because of their work in Kosovo/UNSCR 1244.

Volunteers

Art. 76 (9) of the Law on Foreigners stipulates that volunteers who are working in unions and non-profit institutions in Kosovo/UNSCR 1244 are eligible to work based on a work certificate for the duration of up to 90 days per year.

Students

For the purpose of study, a temporary residence permit with a period of validity of up to one year, or until the end of the academic year, is granted to a foreigner who meets the following conditions:

- studies at a higher education institution in Kosovo/UNSCR 1244;
- comes within a programme of exchange of students and youth mobility;
- comes for an internship authorized by an organization or on the basis of international agreements or agreements between the universities.

Performing an internship of a foreigner shall not be considered as work in terms of the provisions of the law. Neither the law nor administrative acts determine the number of working hours per week which a student can engage in. That means that foreign students can work full time in Kosovo/UNSCR 1244.³⁷

Scientists and Researchers

On the basis of a certificate for employment notification, for up to ninety days within a year, scientists in a scientific and professional training, scientists representing international organizations, scientists which will take part in the realization of scientific projects important for Kosovo/UNSCR 1244, experts, teachers and lecturers of foreign cultural, educational and scientific institutions, may

work in Kosovo/UNSCR 1244 (Law on Foreigners, Article, 76). A temporary residence permit for the purpose of scientific research shall be issued with a period of validity of up to one (1) year to a foreigner who has an agreement with an institution licenced in Kosovo/UNSCR 1244. A foreigner who has an agreement for the purpose of scientific research with any of the European Union Member States or States which are part of the Schengen area may reside for the purpose of scientific research up to ninety (90) days in Kosovo/UNSCR 1244 without an agreement with an institution licenced in the Kosovo/UNSCR 1244. (Law on Foreigners, Article 58). The work permits for scientific research purposes can be received even outside quota system³⁸ as per Article 44 of Law on foreigners.

Seasonal Workers

The Law defines the seasonal worker a foreigner that resides in the state of which he/she is citizen of or in which he/she has a permanent residence permit and who is with an employer based in Kosovo/UNSCR 1244 and has signed a contract for a certain job for a limited time no longer than six (6) months. According to Article 68 of the Law on Foreigners, the annual quota for the employment of foreigners may also include the quota for seasonal employment.

A foreigner who has been granted a work permit for the reasons of seasonal work, may reside in Kosovo/UNSCR 1244 at most six (6) months in the period of one (1) year and must reside outside the Kosovo/UNSCR 1244 for at least six (6) months before it may be possible to enter again and reside for the purpose of work (Article 74/4). For seasonal workers a temporary work permit is issued.

Posted Workers

Besides facilitating the procedures, the novelty of present draft law is also the regulation of Posted Employees status. By meaning of present law the posted employee is an employee sent to Kosovo/UNSCR 1244 by a foreign employer for a temporary or occasional period.

A posted worker as defined by the Law is a worker whose foreign employer, in the framework of cross-border provision of services, has sent him/her for a limited period of time to work in Kosovo/UNSCR 1244, which is not the state in which he/she normally works. A temporary residence shall be granted to a foreigner who resides in Kosovo/UNSCR 1244 as a posted worker. The temporary residence for a posted worker shall be issued to a foreigner which fulfils the conditions laid down in Article 48 (upon providing the required documents to enter Kosovo/UNSCR 1244) and Article 77 (upon any of circumstances), such as to be sent to Kosovo/UNSCR 1244 under a contract concluded between the foreign employer and the employee showing that there is an employment relationship between them.

The posted employee who resides in territory of Kosovo/UNSCR 1244 for more than 3 months is obliged to be provided with residence permit for purposes of employment.

Artists/Professional Sportsmen

Professional athletes or sports activists or artists working in cultural institutions in Kosovo/UNSCR 1244 can be issued a work permit outside quota (Article 70). On the basis of a certificate for employment notification, up to ninety (60) days within a year the artists and technical personnel, for the performances of opera, ballet, theatre, concerts and other cultural performances and On the basis of a certificate for employment notification, up to thirty (30) days within one (1) year, the

authors and performers in the field of music, scene music and art of dance and back up performers, technical personnel may work in Kosovo/UNSCR 1244 and individuals who appear in the sports events and competitions, as representatives of the teams, foreign clubs or state representations (Article 76).

2.4.4. Family reunification

According to the Law on Foreigners, family reunification is each entry to and residence in Kosovo/UNSCR 1244 by family members of a foreigner residing lawfully in Kosovo/UNSCR 1244 in order to preserve the family unit, whether the family relationship arose before or after the foreign resident's entry.

The Law on Foreigners is harmonized with the provisions of the EU Directive on the right to family reunification. Family members enjoy the rights to education, vocational training, work and self-employment as regulated by Article 55. All categories of foreigners are eligible to apply for family reunification, except seasonal workers and daily workers.

The part regulating the duration of a residence permit is entirely aligned with the EU provisions. Family members in Kosovo/UNSCR 1244 are entitled to a residence permit for a maximum of one year or until the expiration of temporary residence of the sponsor (Article 53 (1)). The exception is a foreigner who previously had a continuous temporary residence permit for the purpose of family reunification for at least two years. A temporary residence permit for the same purpose may be granted for a period of up to two years, or until the expiration of the temporary residence permit of the foreigner who is seeking family reunification and held family reunification residence permit of uninterrupted period of two years^{ix} (Art. 53(2) of the Law on Foreigners). The family members of foreigners holding only a short-term residence permit^x are not eligible for family reunification. The law explicitly states the conditions for refusal of family reunification in full alignment with EU Directive 2003/86/EC, if the family member poses a threat for the public order/security or public health of Kosovo/UNSCR 1244. The requirements of the law with regard to conditions to qualify for family unity (evidence of marriage or long-lasting partnership, valid travel document, adequate resources for maintenance, health insurance and proof of accommodation) are also aligned with EU Directive 2003/86/EC.

Exceptionally, an autonomous residence may be permitted to persons who have entered by virtue of family reunification, in the event of widowhood, divorce or separation. According to Article 55 of the Law on Foreigners, a foreigner to whom a temporary residence permit has been granted for the purpose of family reunification and a foreigner with autonomous residence by virtue of family reunification, enjoy the rights to education, vocational training, work and self-employment.

European governments now consider Kosovo/UNSCR 1244 a 'safe country of origin,' which resulted in a considerable reduction of positive decisions on asylum cases from Kosovo/UNSCR 1244. Given the lack of other regular migration possibilities, in the opinion of the Migration research centre at

^{ix} In all the other cases the temporary residence permit is issued for a period of up to 1 year.

^x Please see above the types of residence permits in Kosovo/UNSC 1244 on page 21.

Sussex University, the main legal emigration channel from Kosovo/UNSCR 1244 will remain to be family reunification (Vathi & Black, 2007).³⁹

2.4.5. Social and labour rights

Article 83 of the Law on Foreigners states that a foreigner working in Kosovo/UNSCR 1244 shall enjoy equal treatment as citizens of Kosovo/UNSCR 1244 as regards to:

- education and vocational training;
- recognition of diplomas, certificates and other professional qualifications in accordance with the relevant procedures;
- provisions of respective legislation regarding social security;
- access to goods and services and the supply of goods and services made available to the public, including procedures for obtaining housing as well as information and counselling services afforded by employment offices.

In this regard, the Law can be considered aligned with Part B of 2011/98/EU (Single Permit) Directive which establishes a common set of rights for third-country workers legally residing in a Member State, irrespective of the purposes for which they were initially admitted to the territory of that Member State, based on equal treatment with nationals of that Member State.

According to Law No.04/L-096 on a Social Assistance Scheme, foreign citizens who have residence permits are also entitled to social assistance in Kosovo/UNSCR 1244, if they are registered as unemployed and provide evidence that they are not exercising a business activity.

The Law does distinguish in terms of rights depending on the types of residence the foreigners hold. A foreigner holding a permanent residence has the right to

- employment and self-employment;
- vocational training;
- education and student scholarship;
- social welfare, pension and medical insurance;
- access to goods and services and the supply of goods and services;
- freedom of association and affiliation and membership in an organization representing workers or employers or in any organization whose members are engaged in a specific occupation, including the benefits conferred by such organization.

According to Article 90 of the Law on Foreigner, a foreigner holding a permanent residence has the right to freedom of association and affiliation and membership in an organization representing workers or employers or of any organization whose members are engaged in a specific occupation, including the benefits conferred by such organization.

Employees who are foreigners are also subject to the provision of Law on Labour after they are equipped with residence and work permit.

Access to Education

Children of foreign parents with a long-term residence permit have the right to register in public schools in Kosovo/UNSCR 1244. Pre-university public education is free of charge in all public schools. Public schools provide education in two official languages - the Albanian and Serbian languages. In addition to that, there are numerous private education institutions (from pre-school to tertiary education) in which the language of instruction is English.

Recognition of qualifications

As a result of reforms in higher education in Kosovo/UNSCR 1244, today all institutions of higher education implement the ECTS credit system, a curriculum reform, a three-cycle degree system, a student and staff mobility, a diploma supplement and a quality assurance system.

Although Kosovo/UNSCR 1244 has not yet ratified the Lisbon Convention for the Recognition of Higher Education Qualification (the Convention on the Recognition of Qualifications concerning Higher Education in the European Region), 1997 (ETS No. 165), there is a clear legal framework and procedures in place for the recognition of qualifications obtained abroad.

The National Academic Recognition Information Centre (NARIC) within the Ministry of Education, Science and Technology (MEST) is responsible for conducting all the procedures for the recognition of tertiary education diplomas obtained abroad. Foreigners who apply for the nostrification of their diplomas are requested to provide information on the reason why they need to undergo this procedure (typically their employment contract with an institution/business from Kosovo/UNSCR 1244).

The development of a National Qualification Framework (NQF), in line with European Qualification Framework (EQF), is another step forward undertaken by the authorities from Kosovo/UNSCR 1244 to facilitate labour mobility.

Up to date, however, no mutual recognition agreements have been signed, which should further facilitate mobility of qualified professionals.

Support in getting further training

Foreign citizens who have temporary or permanent stay permits are eligible to be registered as jobseekers in Kosovo/UNSCR 1244, if applicable, and hence benefit from all the services provided by public employment services, provided they are free of charge, such as employment counselling and career guidance, job mediation services, rehabilitation and vocational training.

Article 126 of the Law on Foreigners stipulates that the responsible institutions in Kosovo/UNSCR 1244 must provide conditions for integration into the economic, cultural and social life of foreigners who enjoy the right to reside in Kosovo/UNSCR 1244.

The right to appeal

A foreigner who is subject to a return decision has the right to appeal to the Appeals Commission, within eight days of receipt of the return decision. The Commission should resolve the issue within fifteen days of the receipt of the appeal. In cases where the foreigner is dissatisfied with the decision of the Appeals Commission he/she may lodge an administrative dispute at the Basic Court, within

eight days from the receipt of the decision. The Court should resolve the issue within sixty days from the date of the receipt of the appeal (Article 95, the Law on Foreigners).

2.4.6. Recruitment regulation

Article 9 of the Law on Labour states that foreigners and stateless persons inside Kosovo/UNSCR 1244 shall establish employment relationship on the basis of this Law, under the terms and criteria defined with a special law on the employment of foreigners (now changed to the Law on Foreigners) and on the basis of international conventions. The Law on Foreigners defines the Temporary Work Agency as “any natural or legal person who, in compliance with applicable law concludes contract of employment or employment relationships with temporary agency workers in order to assign them to user undertakings to work there temporarily under their supervision and direction”.

The collective agreement for all employees in Kosovo/UNSCR 1244 regulates the implementation and protection of the principle of equality of individuals and their groups from all forms of discrimination. Accordingly, a labour contract is concluded in writing and in an official language used in Kosovo/UNSCR 1244. The labour contract should be signed and dated by the employer and the employee. The minimum age for employment is eighteen years of age. A person under 18 years of age may only be employed in a light work that is not likely to be harmful to his/her health or development, and that does not affect his/her attendance at school. A person under 15 years of age may not be employed.

The employment relationship can be established for an indefinite or definite time. The requests for young employees have to be sent to the office for employment in the respective municipality where the residence of the employer is located. Before signing the employment contract, the employer is obliged to notify the employee about the contents of the collective contract and about other common acts that determine the rights and obligations. The provisions of the labour contract regulate the probation employment relationships, which cannot be extended to more than ninety days from the day of the employment. During the probation work, the employer and the employee can break up the employment relationship without notice.

Public Employment Service (hereafter “PES”) in Kosovo/UNSCR 1244 was re-established in 2001, as part of the Ministry of Labour. Under the direct supervision of the Ministry of Labour, or more specifically, the department for Labour and Employment, 7 Regional (Public) Employment Centers, 23 Municipal Employment Offices, and 8 Vocational Training Centers were formed to provide several functions to jobseekers, including the registration of jobseekers, job search assistance, counselling, and the implementation of various active labour market programmes.⁴⁰ According to Article 83 of Law on Foreigners a foreigner working in Kosovo/UNSCR 1244 enjoys equal treatment as Kosovo/UNSCR 1244 citizens as regard to the information and counselling services afforded by employment offices.

The services most frequently offered by PES to jobseekers include: job counselling and placement support, job search assistance, labour market information, career guidance, self-service facilities (such as vacancy and CV databases and online access to relevant information), case management or intensive support for particular groups (profiling, individual action plans), and job clubs and/or job fairs.

In regard to services offered to employers the most common services offered from PES are information and guidance on recruitment such as vacancy registration, vacancy and CV databases, pre-selection/selection services, support for human resources development such as training for employees and assessment of staff qualification needs.

Senior Officials of the Ministry of Labour and Social affairs confirmed that the activity of private mediation employment agencies is not regulated by any special law. In Kosovo/UNSCR 1244 there is no record of cooperation and collaboration between the PES and private employment agencies⁴¹. Given that there are constraints faced by the PES in attracting vacancies such collaboration may bring additional vacancies onto the registry of the PES.

2.4.7. Employer responsibility

The regulation of the employer responsibility guaranteed for national employees by the Law on Labour is applicable to foreigners employed in Kosovo/UNSCR 1244. Employers have the obligation to request a residence or a single permit, or a work certificate from the foreign worker, and have to keep their copy during the entire period of employment. An employer is obliged to ensure necessary conditions for the occupational safety in order to protect the life and health of employees in compliance with the Law on Labour, Article 42(2), and to inform the employee, in writing, before his/her engagement about the occupational hazards and protective measures he/she is obliged to undertake Article 42 (3).

According to the Law on Foreigners, Article 128(2), the Labour Inspectorate can issue a fine in the amount from one thousand to two thousand and five hundred ...Euro to an employer - a natural person, and from five thousand Euro to seven thousand Euro... to an employer - a legal entity, if the employer has not concluded a contract with the foreigner; hired him/her without other appropriate documents has not informed the Department for Citizenship, Asylum and Migration of MIA about the change/termination of the conditions on the basis of which the residence and work permit has been granted to the employed foreigner.

All the official records are kept in accordance with the Law on Protection of Privacy. The Labour Inspectorate keeps the records for illegally employed foreigners, while the Ministry of Internal Affairs keeps residence permits related records.

2.4.8. Migration statistics and data

The competent authorities are obliged by law to collect and administer data on foreigners, storing the data for a period of five years after the expiration of validity of the visa or the temporary residence permits, or ten years from the conclusion of punitive administrative or criminal proceedings. The authorities who collect and administer personal data of foreigners shall take appropriate organizational and technical measures to protect personal data from unlawful or accidental destruction, accidental loss, access or distribution to unauthorized persons (Article 122, Law on Foreigners).

The statistics on inward labour mobility to Kosovo/UNSCR 1244 are available from the MLSW, MIA and the Kosovo Agency of Statistics (KAS). The administrative records of foreign citizens working in

Kosovo/UNSCR 1244 compiled by the MLSW and the MIA appear to be the most complete and reliable source of data for regional labour migration in Kosovo/UNSCR 1244. These records contain information on the characteristics of foreign workers (such as date of birth, citizenship, occupation, level of education) and of his/her employment in Kosovo/UNSCR 1244 (such as name of organization, position held, sector of economic activity, length of employment contract). On a yearly basis, the data on the number of work permits or temporary residence permits issued can be found in extended migration profiles starting from 2012^{xi}. Another source of data on migration, though not specifically on labour mobility, could be the Kosovo Population and Housing Census, last conducted in 2011 by the Kosovo Agency of Statistics (KAS).

By the end of 2013, the Ministry of Labour and Social Welfare issued 1,614 work permits for foreign nationals in total. The highest number of work permits is given to Turkish nationals with 49.7 percent, then Albanians with 18.3 percent and nationals of the former Yugoslav Republic of Macedonia with 6.6 percent.

3.0. Main finding, recommendations and conclusions

3.1. Overall compliance with EU *acquis*

The authorities in Kosovo/UNSCR 1244 have made considerable efforts to follow up and build in most of relevant migration *acquis*, where feasible, into the Law on Foreigners and respective by-laws, in particular Directive 2011/98 on a single application procedure for a single permit, the EU Directive 2003/86/EC on the right to family reunification, the Directive 2004/114/EC on the conditions of admission of third-country nationals for studies and training, the Directive 2003/109/EC on admitting third country nationals for research and (Directive 2005/71/EC) on long-term residents.

Given a considerable risk of migrant workers' rights breaches due to their particular vulnerability status, it is of a particular importance that foreign nationals benefit from the same scope of rights as national workers accordingly to chapter "Right to Equal Treatment" within Directive 2011/98.

3.2. Key gaps in compliance with EU *acquis*

While Kosovo/UNSCR 1244 has the advantage of having a very sound legal framework aligned with the most recent EU Directives, prepared from scratch under the supervision of international legal experts, it lacks experience in governance, with many of the main institutions being less than few years old. The implementation of laws is still in the process of formation in Kosovo/UNSCR 1244. Although the newly approved Law on Foreigners addresses the employment of foreigners in a most comprehensive and EU compliant way as compared with other similar laws in the region, it is necessary that this law is properly put into practice and implemented in its full complexity.

^{xi} The Kosovo Extended Migration profile 2013 was in drafting process at the time of the preparation of this report, with the expected completion date by the end of July, 2014.

Further, as mentioned earlier in this report, further approximation with EU *acquis* is necessary, specifically in terms of labour rights of irregular migrants, such as access to health services, social services and education. The right to self-employment can be recommended for extension to other categories of migrants other than long-term residents and family members.

As stated in the EU Report for Kosovo/UNSCR 1244 “Harmonisation of the implementing legislation with the revised law on foreigners remains outstanding”.⁴²

3.3. Key legislative provisions acting as barriers to labour mobility towards the country and within the SEE region

There are no legislative provisions acting as barriers to inward labour mobility towards Kosovo/UNSCR 1244, but there are barriers to labour mobility from Kosovo/UNSCR 1244 towards the SEE region. There is still low inter-regional and international migration of the labour force between non-EU member SEE countries and EU countries. A big number of young Kosovars with higher education diplomas aspire to work in other countries, region or EU countries. The problems with the recognition process in other countries related to the length of studies, duration of practical work, quality of studies, no automatic recognition and additional training required in most cases act as barriers in terms of outward labour mobility.

A key concern for the Government of Kosovo/UNSCR 1244 is the need to tailor vocational training more closely to the needs of business than is currently the case. By making training compatible with the European Qualifications Framework (EQF), the aim is also to make Kosovo/UNSCR 1244 more attractive to investors and increase labour-force mobility. The Ministry of Labour and Social Welfare is maximally committed to rendering necessary services for the employees in Kosovo/UNSCR 1244 and to creating conditions for the jobseekers to get professionally trained in those profiles required by the economy of local and international labour market.⁴³

In terms of labour mobility, the current structure of the information management system in Kosovo/UNSCR 1244 is still underdeveloped, as Kosovo/UNSCR 1244 does not have full access to Interpol or Europol information systems, which might be a concern rather than a legal barrier.

3.4. Recommended steps in the mid-term perspective (up to 2020)

Regional labour mobility should be promoted further in Kosovo/UNSCR 1244 and in the SEE region. Bilateral and regional labour mobility agreements would be a comprehensive mechanism of enhancing labour mobility, as they will allow addressing the main obstacles in a comprehensive and harmonized manner. A proper legal regulation of bilateral or regional labour mobility would prevent rights abuses of migrant workers and contribute to safe, well-informed and mutually beneficial labour migration. Accordingly can be recommended, specifically that,

- Bilateral or regional labour mobility agreements in the region could focus on specific high-skilled occupations depending on each country’s labour market conditions and skill deficits.
- Academic credentials accepted through mutual recognition agreements should be a good opportunity for mobility of qualified professionals.

- Policy-oriented research on the impacts of regional labour mobility and inward and outward labour mobility of Kosovo/UNSCR 1244 should be necessary to guide the future policies related to labour mobility.⁴⁴
- Safeguards against migrant workers abuse in Kosovo/UNSCR 1244 should be clearly indicated, such as rights to be guaranteed by an employer (e.g. absence or reduced remuneration, safety at work, illegal dismissal, etc.)⁴⁵.
- Educate migrant workers on their responsibilities and rights while in Kosovo/UNSCR 1244.⁴⁶
- As stated in the report of Department of Labour and Employment (2013)⁴⁷ establishing partnerships with the private employment agencies, including 'Temporary Work Agencies' might bring additional vacancies onto the registry of the PES.

As the Government of Kosovo/UNSCR 1244 continues to undertake all political and social measures on migration management, it is important to continue promoting regular migration, including the facilitation of travel to EU, benefiting from circular migration that facilitates short-term work of citizens of Kosovo/UNSCR 1244 and EU Member States, migration for study purposes, seasonal employment, experience exchange and trainings.

The Extended Migration profile (2012) and findings of this report suggest that with regard to exporting labour, some further work needs to be undertaken in Kosovo/UNSCR 1244 in order to regulate the conditions and ensure rights of workers going abroad. One possibility can be establishing specialized overseas administrative bodies which will be responsible for managing labour mobility, and in particular for:

- regulating recruitment to overseas employment,
- informing migrants of resources available abroad,
- providing protection and representation through a migrant welfare fund and absentee voting,
- setting up mechanisms to learn more about migrant needs.

There are indications that some acts of the Labour Law, such as the employment contract and the working hours, are not being implemented properly in the private sector. Therefore, there is an urgent need to strengthen the overseeing mechanisms, especially the labour inspectorate.⁴⁸ The Law on Labour Inspectorate should be amended to refer to the existing Law on Labour.⁴⁹

Finally, given Kosovo/UNSCR 1244's demographics and high unemployment, promotion of labour regular migration requires expending more efforts on managing the process, for instance, by designing policies at each stage of the process prior to migration, i.e. pre-decision making, pre-employment and pre-departure. In this context, investing in building up technical skills of migrant workers would also be highly desirable so that potential migrants have better employment opportunities abroad.

¹ Vathi & Black (2007). *Migration and Poverty Reduction in Kosovo*. Development Research Centre on Migration, Globalisation and Poverty. p. 8. Available from: http://www.migrationdrc.org/publications/working_papers/WP-C12.pdf

² World Bank Report (2003), *Kosovo Labour Market Study: Policy Challenges of Formal and Informal Employment*. Available from:

<http://www.esiweb.org/pdf/bridges/kosovo/1/11.pdf>

³ European Commission. Kosovo* 2013 Progress Report. (Brussels, 2013). Available from:

http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/brochures/kosovo_2013.pdf

⁴ Republic of Kosovo. Ministry of Internal Affairs. State Strategy on Migration and Action Plan (2013-2018). (Prishtina, 2013). Available from: <http://www.mpb-ks.org/repository/docs/National%20Strategy%20on%20Migration-Final.pdf>

⁵ Republic of Kosovo. Ministry of Internal Affairs. State Strategy on Migration and Action Plan (2013-2018). (Prishtina, 2013). Available from: http://www.mpb-ks.org/repository/docs/Strategjia_per_Migrim_ANG.pdf

⁶ Republic of Kosovo. *National Strategy for Reintegration of Repatriated Persons*. Available from: http://www.mpb-ks.org/repository/docs/National_Strategy_for_Reintegration_of_Repatriated_Persons.pdf

⁷ Republic of Kosovo. *National Strategy on Integrated Border Management 2012 – 2017*. Available from: http://www.mpb-ks.org/repository/docs/Strategy_for_Counter_Terrorism_2012-2017_eng.pdf

⁸ Republic of Kosovo. *Action Plan against Trafficking in Human Beings 2011 – 2014*. Available from: <http://www.mpb-ks.org/repository/docs/TQNJAnlisht.pdf>

⁹ Republic of Kosovo. National Strategy and Action Plan of the Republic against Organized Crime 2012 – 2017. Available from:

http://www.mpb-ks.org/repository/docs/Strategy_against_Organized_Crime_2012-2017_eng.pdf

¹⁰ Republic of Kosovo. *National Strategy of the Republic of Kosovo on Crime prevention and Action Plan. 2012-2017*. Available from: http://mpb-ks.org/repository/docs/Strategjia_shtetore_e_Republikes_se_Kosoves_per_parandalim.pdf

¹¹ Republic of Kosovo. Ministry of Internal Affairs. State Strategy on Migration and Action Plan (2013-2018). (Prishtina, 2013). p. 28. Available from: <http://www.mpb-ks.org/repository/docs/National%20Strategy%20on%20Migration-Final.pdf>

¹² European Commission. Kosovo* 2013 Progress Report. (Brussels, 2013). Available from:

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¹⁵ Law on granting the permit of work and employment of foreign citizens no. 03/L-136. Available from:

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¹⁷ Law on Civil Registers (no. 2004/46) http://www.kuvendikosoves.org/common/docs/ligjet/2004_46_en.pdf

¹⁸ Law on Dwelling and Emplacement L (Official Gazette no. 02 /L-121) Available from:

http://www.kuvendikosoves.org/common/docs/ligjet/2007_02-L121_en.pdf

¹⁹ Law on Labour No.03/L –212 Available from: <http://www.assembly-kosova.org/common/docs/ligjet/2010-212-eng.pdf>

²⁰ Law for Prevention and Fight of Trafficking in Human Beings, and Protection of the Victims of Trafficking No. 04/L-218.

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²⁴ Law on Foreigners, No. 04/L-219. Available from: <http://www.kuvendikosoves.org/common/docs/ligjet/Law%20on%20foreigners.pdf>

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³¹ Law is approved by Assembly, date 02.11.2010 and promulgated by the Decree of the President of the Republic of Kosovo No. DL-077-2010, Date 18.11.2010

³² The Law that defines the employment of foreigners is the existing Law on Foreigners.

³³ Law on Foreigners 04/L-219, Article 67. Available from:

<http://www.kuvendikosoves.org/common/docs/ligjet/Law%20on%20foreigners.pdf>

³⁴ Please see Kosovo Interim report on Labour Mobility , as well

<http://www.kuvendikosoves.org/common/docs/ligjet/Law%20on%20foreigners.pdf>

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³⁶ Article 70 of Law on Foreigners 04/L-219. Available from:

<http://www.kuvendikosoves.org/common/docs/ligjet/Law%20on%20foreigners.pdf>

³⁷ According to interview with the Head of Division for Harmonization of Legislation within MIA

³⁸ Law on Foreigners, Article 44. Available from: <http://www.kuvendikosoves.org/common/docs/ligjet/Law%20on%20foreigners.pdf>

³⁹ Vathi & Black (2007). *Migration and Poverty Reduction in Kosovo*. Development Research Centre on

Migration, Globalisation and Poverty. Available from: http://www.migrationdrc.org/publications/working_papers/WP-C12.pdf

⁴⁰ Republic of Kosovo. Ministry of Labour and Social Welfare. (2013). *Systemic overview of public employment service (PES) in Kosovo*.

Available from: <http://eye-kosovo.org/wp-content/uploads/2014/04/SystemicOverviewofPublicEmploymentService-PES-inKosovo-23092013.pdf>

⁴¹ Idem

⁴² European Commission. (2013). *Kosovo (2013) EU Progress Report*. Available from:

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⁴⁴ Kosovo Interim report on Labour Mobility states that as well

⁴⁵ All interviewees agreed that education on rights and safeguards of migrant workers should be promoted.

⁴⁶ All interviewees agreed that education on rights and safeguards of migrant workers should be promoted.

⁴⁷ Republic of Kosovo. Ministry of Labour and Social Welfare. (2013). Systemic overview of public employment service (PES) in Kosovo.

Available from: <http://eye-kosovo.org/wp-content/uploads/2014/04/SystemicOverviewofPublicEmploymentService-PES-inKosovo-23092013.pdf>

⁴⁸ [http://www.fes-prishtina.org/wb/media/Publications/2011/Labour%20Law%20-%20its%20implementation%20in%20the%20first%20six%20months%20\(English\).pdf](http://www.fes-prishtina.org/wb/media/Publications/2011/Labour%20Law%20-%20its%20implementation%20in%20the%20first%20six%20months%20(English).pdf)

⁴⁹ [http://www.fes-prishtina.org/wb/media/Publications/2011/Labour%20Law%20-%20its%20implementation%20in%20the%20first%20six%20months%20\(English\).pdf](http://www.fes-prishtina.org/wb/media/Publications/2011/Labour%20Law%20-%20its%20implementation%20in%20the%20first%20six%20months%20(English).pdf)

4.0. Annexes

4.1. List of key national legal documents

Laws and regulations

1. Constitution of the Republic of Kosovo
2. Law on Foreigners (Assembly of the Republic of Kosovo no. 03/L-126) which replaced the Law on Granting the Permit of Work and Employment of Foreign Citizens of Republic of Kosovo
3. Law on Foreigners (Assembly of the Republic of Kosovo 1244 no. 04/L-219)
4. Law on Labour (Assembly of the Republic of Kosovo no. 03/L –212)
5. Law on Integrated management and control of the state border (Assembly of the Republic of Kosovo/ no. 03/L-065)
6. Law on Asylum (Assembly of the Republic of Kosovo no. 04/L-217)
7. Law on Citizenship of Kosovo/UNSC 1244 (Assembly of the Republic of Kosovo no. 03/L-034)
8. Law on Civil Registers (Assembly of the Republic of Kosovo no. 2004/46)
9. Law for Prevention and Fight of Trafficking in Human Beings, and Protection of the Victims of Trafficking (Assembly of the Republic of Kosovo no. 04/L-218)
10. Law on Dwelling and Emplacement (Assembly of the Republic of Kosovo no. 02 /L-121)

Policies

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2009 *The National Strategy and Action Plan on Migration for 2009–2012*. Available from: <http://www.mpb-ks.org/repository/docs/National%20Strategy%20on%20Migration-Final.pdf>
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2011 *Action Plan against Trafficking in Human Beings 2011 – 2014*. Available from: <http://www.mpb-ks.org/repository/docs/TQNJAnglisht.pdf>
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2013 *Systematic Overview of Public Employment Service (PES) in Kosovo* Available from: http://eye-Kosovo.org/wp-content/uploads/2014/04/SystemicOverviewofPublicEmploymentService-PES-inKosovo/UNSC_1244-23092013.pdf
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2013 *State Strategy on Migration and Action Plan (2013-2018)*. Available from: <http://www.mpb-ks.org/repository/docs/National%20Strategy%20on%20Migration-Final.pdf>
8. Republic of Kosovo.
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9. Republic of Kosovo, Ministry of Internal Affairs
2013 *Administrative instruction no. 22/2013 on the conditions and procedures of the visa extension*. Available from: [http://www.mpb-ks.org/repository/docs/UDHEZIM_ADMINISTRATIV_\(MPB\)_NR._22-2013_PER_KUSHTET_DHE_PROCEDURAT_E_VAZHDIMIT_TE_VIZES.pdf](http://www.mpb-ks.org/repository/docs/UDHEZIM_ADMINISTRATIV_(MPB)_NR._22-2013_PER_KUSHTET_DHE_PROCEDURAT_E_VAZHDIMIT_TE_VIZES.pdf)
10. Republic of Kosovo, Ministry of Internal Affairs
2013 *Administrative Instruction no. 24/2013 on refusal of entry into Republic of Kosovo/UNSC 1244*. Available from: [http://www.mpb-ks.org/repository/docs/UDHEZIM_ADMINISTRATIV_\(MPB\)_NR._24-2013_PER_REFUZIM_HYRJES_NE_REPUBLIKEN_E_KOSOVES.PDF](http://www.mpb-ks.org/repository/docs/UDHEZIM_ADMINISTRATIV_(MPB)_NR._24-2013_PER_REFUZIM_HYRJES_NE_REPUBLIKEN_E_KOSOVES.PDF)
11. Republic of Kosovo, Ministry of Internal Affairs
2013 *Administrative Instruction no. 01/2014 on the procedure of issuance of residence permits for foreigners and the certificate for notification of work*. Available from: [http://www.mpb-ks.org/repository/docs/UDHEZIM_ADMINISTRATIV_\(MPB\)_NR._01-2014_PER_PROCDUREN_E_LESHIMIT_TE_LEJES_SE_QENDRIMIT_PER_TE_HUAJT_DHE_VERTETIMIT_PER_LAJMERIMIN_E_PUNES.pdf](http://www.mpb-ks.org/repository/docs/UDHEZIM_ADMINISTRATIV_(MPB)_NR._01-2014_PER_PROCDUREN_E_LESHIMIT_TE_LEJES_SE_QENDRIMIT_PER_TE_HUAJT_DHE_VERTETIMIT_PER_LAJMERIMIN_E_PUNES.pdf)

Other documents

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2. World Bank
2003 *Kosovo Labour Market Study: Policy Challenges of Formal and Informal Employment*. Available from: <http://www.esiweb.org/pdf/bridges/Kosovo/1/11.pdf>
3. European Union Agency for Fundamental Rights
2013 *Handbook on European Law relating to asylum, borders and immigration*. Available from: http://fra.europa.eu/sites/default/files/handbook-law-asylum-migration-borders_en.pdf

4. European Commission
2013 *Kosovo Progress Report*. Available from:
http://eeas.europa.eu/delegations/kosovo/documents/eu_kosovo/ks_progress_report_2013_en.pdf

Other documents

4.2. List of key international and regional agreements

1. Universal declaration of Human rights;
2. Geneva Convention on Refugees Protection;
3. New York Convention on Stateless Persons;
4. United Nations Conventions on Elimination of All forms of Discrimination Against Women;
5. United Nations Convention against Torture and other Cruel, Inhumane or Degrading Treatments and punishments;
6. European convention for the Defence of Fundamental Human Rights and Freedoms and the protocols thereto;
7. United Nations Convention on the Rights of the Child (1989) (UNCRC);
8. International Convention on Civil and Political Rights and the Protocols thereto.

List of European Union Directives

1. Council Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals. OJ L 157, 15.06.2002, p. 1–7
2. Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State. OJ L 343, 23.12.2011, p. 1–9
3. Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment. OJ L 155, 18.06.2009, p. 17–29
4. Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications. OJ L 255, 30.09.2005, p. 22–142
5. Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers. OJ L 94, 28.03.2014
6. Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research. OJ L 289, 03.11.2005, p. 15–22
7. Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer. OJ L 157, 27.05.2014, p. 1–22

8. Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals. OJ L 168, 30.06.2009, p. 24–32
9. Regulation (EC) No 862/2007 of the European Parliament and of the Council of 11 July 2007 on Community statistics on migration and international protection and repealing Council Regulation (EEC) No 311/76 on the compilation of statistics on foreign workers. OJ L 199, 31.07.2007, p. 23–29

4.3. Officials within following institutions consulted

Name	Institution/Dept.	Position	Date of interview
Shkodran Manaj	Ministry of Internal Affairs	Head of Division for drafting and harmonization of legislation	25/26 June, 2014 and 01/02/11 July, 2014
Sefedin Kuci	Ministry of Internal Affairs	Head of Citizenship, Asylum and Migration	07/08/09/17/18 July, 2014
Minire Begaj	Ministry of Labour and Social Welfare	Senior Official for Legislation	27/30 June, 2014
Mentor Borovci	Ministry of Diaspora	Head of Legal Department	03 July, 2014
Rexhep Vasolli	Ministry of Finance	Director of the Department for European Integration and Policy Coordination	04 July, 2014
Shpetim Kalludra	Ministry of Labour and Social Welfare	Chief of Section for Labour Market Analysis	16 July, 2014
Mergim Himaj	Ministry of Internal Affairs	Legal Specialist	17/18 July, 2014
Mr.Fadil Osmani	Ministry of Labour and Social Welfare	High official for granting the work permits to foreigners	



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