

American University Washington College of Law

Digital Commons @ American University Washington College of Law

Human Rights Brief Spring 2018 Regional Coverage

Human Rights Brief 2016-2019 Regional Coverage

Spring 2018

Europe & Central Asia Coverage

Human Rights Brief

Follow this and additional works at: <https://digitalcommons.wcl.american.edu/hrbregionalcoverage-spring2018>



Part of the [Human Rights Law Commons](#)

Angry, Young Men

February 13, 2018

by Chris Rennie

A [recent study](#) funded by the German government's Federal Ministry for Family Affairs attributed a ten percent rise in violent crime within Lower Saxony, a German state, to migrants settled in the region. Criminologists postulated that, between 2014 and 2016, migrants were responsible for ninety-two percent of the increase in violent crime. Critics of the German government's [accommodating refugee policy](#) have celebrated the study's conclusion as hard proof that migrants are having a detrimental impact on German society.

Long dormant, right-wing nationalism has stirred in Germany for the first time since the 1930s. With its surprising electoral victories last year, far-right Alternativ für Deutschland (AfD) [became the third-largest party](#) in a [fragmented](#) German parliament. The AfD had rallied conservative voters with its promise [to end non-European immigration to Germany](#). Speaking to the German parliament this month, an AfD politician underscored his party's legislative agenda: "[\[the\] incentives to come here must end.](#)" Their first proposal was a bill amending Germany's [Residence Act](#) to prohibit refugees already in Germany from inviting close relatives to the country.

Currently, [Section 27](#) of the Residence Act permits dependents of migrants to emigrate to Germany "so that they can live together as a family...to protect marriage and the family." Family reunification, sometimes called chain migration, has been central to European immigration policies since the conclusion of the Second World War. In the 1948 [Universal Declaration of Human Rights](#), European nations established that "[the] family is the natural and fundamental group unit of society and is entitled to protection by society and the State."

Christian Pfeiffer, the criminologist who was the principal author of the German government's study on violent crime, noted that refugees fleeing warzones in the Middle East were less likely to commit violent crimes overall. Migrants from North Africa, however, were [overrepresented](#) in the crime statistics. The difference between these two populations was that Middle Eastern migrants comprised all levels of society, while the North African migrant population was almost exclusively male, between fourteen and thirty years old.

Unlike migrants from Syria and Iraq, migrants from North Africa [cannot qualify for asylum](#) in Germany. While some may receive temporary "[subsidiary protection](#)," many arrive in Germany and cannot secure any legal immigration status. They often remain, working in shadow economies or not working at all, as German immigration officials struggle against [logistical and procedural hurdles](#) to deport them.

The link between idle young men with no social standing and the commission of violent acts is [extremely strong](#). The author of the study on violent crime himself [hypothesized](#) that "the lack of women has a negative effect" on the development of healthy norms of masculinity. It is somewhat surprising, then, that the AfD has cited the study to justify a more restrictive policy on family reunification. In fact, the study offered family reunification as a possible solution to the problem of violent crime committed by migrants.

This should come as no surprise to those who attempt to understand the nuances of the migration crisis. There are now more than [65 million migrants](#) displaced around the world, the most in human history. With displacement comes violence and extremism that a stable society would otherwise sublimate or redirect. Although the Migration Policy Institute ranks German immigration policies in general as [slightly more comprehensive](#) than the rest of Europe, the German government's family reunion policies rank twenty-fourth out of thirty-eight European countries.

National policies leading to [social exclusion increase the risk of poverty](#). In recognition of this, the European Union has [funded an initiative](#) to significantly mitigate risk factors of poverty by 2020. Germany, like many Western nations, now faces a choice: submit to extreme nativism based on ideals of ethnic purity or attempt to solve the ills of displacement by extending hospitality to the stranger from foreign lands.

Brexit Bill Will Leave Glaring Hole in Human Rights in the UK

February 21, 2018
by Abbey Reynolds

In [June 2016](#), the United Kingdom (UK) voted to leave the European Union (EU). This decision has come to be known as “Brexit” and was met with shaky support, to say the least. The departure will happen on March 29, 2019, but the UK is already [discussing](#) how the government is going to handle this transition. A bill called the European Union Bill was recently introduced to Parliament which, if passed, will essentially end the [primacy](#) of EU law within the UK. Effectively, the bill will lump all EU legislation together with current UK law and over time, the government will decide which [parts](#) to keep or remove. Even more troubling, one of the most fundamental pieces of EU legislation that will not be [transferred](#) to the UK is the European Charter of Fundamental Rights (“Charter”). The language of the bill [reads](#), “the Charter of Fundamental Rights is not part of domestic law on or after exit day.”

By passing the Brexit bill as it currently stands, the government of the United Kingdom will leave many societal groups without adequate [protection](#) under the law. This glaring hole has caused many civil rights bodies, such as the Equality and Human Rights Commission (EHRC) and Amnesty International, to [warn](#) against the bill. Excluding the protections of this Charter would “cause legal confusion and ... gaps in the law,” [says](#) chair of the EHRC, David Isaac. The main problem with losing the Charter is that it provides a certain number of rights and judicial remedies that do not have an equivalent in UK law. According to the EHRC, rights that would be lost without a direct replacement in UK law [include](#) a “freestanding right to non-discrimination, protection of a child’s best interests and the right to human dignity.” The current legislation protecting human rights in the UK is the Human Rights Act, but this [fails](#) as a defense to violation of human rights because it does not override acts of Parliament. The Charter is essential to providing an adequate remedy for violation because it will [prevail](#) over an act.

The government continues to insist that current UK law contains equivalent protections to those in the [Charter](#). The bill was almost defeated last year, but the government kept it alive by promising to conduct a “right-by-right analysis,” [explaining](#) how the current protections in the Charter will be guaranteed after the exit. The Labour Party, however, was unsatisfied with the analysis, [calling](#) it “woefully inadequate” and proposing an amendment to preserve the provisions of the Charter. The amendment was [voted](#) down by Parliament on January 16, 2018.

The UK has a duty to its citizens to provide them with certain basic protections, based on their [adoption](#) of the Universal Declaration of Human Rights (UDHR). The UDHR [influenced](#) the 1998 Human Rights Act, from which the country’s current human rights protections stem. The Human Rights Act [provides](#) certain basic protections, such as the right to life, freedom from torture, and freedom from slavery, among others. The EU Charter [provides](#) a stronger defense of fundamental rights because it overrides acts of the Parliament when there is a conflict over basic rights, making it a much [stronger](#) legal defense when combatting violations of human rights. The government contends that the citizens of the UK are protected through the democratic process,

assuming that the ability to elect Members of Parliament is an [adequate](#) assurance that their representatives will protect their basic rights. It seems foolish, however, to found an entire group's basic rights protection solely on the goodwill and moral compass of the government, even if that government has been democratically elected.

European Court of Human Rights Declares Detention Arbitrary in Case of Man Held for Over a Decade in Romanian Psychiatric Institution

June 22, 2018

by Mariela Galeazzi*

On November 7, 2017, the European Court of Human Rights (ECtHR) decided [“N v. Romania”](#) and declared that the State had violated the right to personal liberty of *N*, a man diagnosed with [paranoid affective psychosis](#), who was detained in several psychiatric institutions for over fifteen years after being accused of [incest](#), [“sexual corruption”](#) of his daughters, and [rape](#) of his wife.

Although *N* was never found criminally guilty and did not face a trial, his record of a psychiatric diagnosis and related alleged dangerousness allowed a criminal court to issue a [“compulsory confinement”](#) measure against him. This measure resulted in his physical imprisonment in a psychiatric hospital and required him to undergo medical treatment. Over the course of a decade all attempts to challenge that decision were dismissed by local courts on the basis of his psychiatric diagnosis, alleged dangerousness, and [“lack of social and family support”](#) until he was released on February 21, 2017 under less restrictive but still “compulsory” treatment measures.

The case against *N* started in 2001 [following an article in the Romanian national press and a television program](#). The Public Prosecutor opened a criminal procedure to investigate *N*, but ultimately decided to close the case after hearing from *N*’s wife and daughters. The Prosecutor considered, with regard to the charges for incest, that there was not enough evidence. With respect to the charges for rape, he contended that the accused’s wife did not fill out the required criminal complaint. Finally, regarding the charges for [“sexual corruption,”](#) the decision to close the investigation was based on the accused’s [“lack of discernment”](#) regardless of the existence of sufficient evidence to prosecute. Instead of advancing the investigation and trial, the Prosecutor requested that the court impose a “compulsory confinement” measure (Art. 114 Criminal Code of Romania) based on the fact that *N* “suffer[ed] from chronic paranoid schizophrenia” and was unclear as to the acts he committed.

N challenged the order of detention several times throughout almost ten years, but his petitions were systematically rejected on the basis of medical forensic reports and the dangerousness charge groundlessly associated with both his diagnosis and his criminal record. In his petition to the ECtHR, [he requested](#) the tribunal to order the State to “ensure, at all cost . . . his transition from life in an institution to life in the community, by providing him with the necessary support in exercising his legal capacity, seeking proper housing and obtaining psychological assistance.” The

* The author, Mariela Galeazzi, is a fellow of the Disability and Human Rights Fellowship Program (Center of Human Rights and Humanitarian Law) sponsored by the Open Society Foundations (OSF). The opinions expressed herein are the author’s own and do not necessarily express the views of OSF.

Court instead [ordered the State](#) to comply with the local decision issued on February 21, which did not contain any provision to follow-up after his release or ensure he had the necessary support to reintegrate into the community.

When analyzing the arbitrariness, the ECtHR found that the local courts failed to assess the dangerousness of *N* according to local legislation or ECtHR jurisprudence, as they had [“referred purely and simply to the findings of the forensic medical report.”](#) Also, it highlighted that local courts did not examine whether [alternative measures](#) could have been applied in this case to promote *N*'s inclusion in the community. On these grounds, the ECtHR concluded that the detention had no legal basis since 2007 and, therefore, violated the right to security and liberty, including the right not to be unlawfully detained enshrined in Article 5.1 of the [European Convention on Human Rights](#). Furthermore, it pointed out that although local courts eventually authorized *N*'s release, that measure was not achieved due to the lack of assessment of the needs of *N* or the lack of appropriate [“reception facilities”](#) in the community. Finally, the Court recommended the State to consider the adoption of general measures to ensure that the detention of individuals in psychiatric institutions is lawful and that they are granted [“access to a judicial appeal accompanied by appropriate safeguards.”](#)

While this decision might be considered appropriate to the extent that it criticized the actions and procedures of local authorities, ordered the release of *N*, and recommended that the State adopt general measures of access to justice, the ECtHR missed the opportunity to advance the rights of persons with psychosocial disabilities within criminal law systems according to international human rights law and standards. More specifically, it reinforced an interpretation of the right to liberty that has already been considered discriminatory against persons with disabilities.

The [Convention on the Rights of Persons with Disabilities](#) (CRPD) affirms the principle of equality (Art. 2) and states that persons with disabilities have the right to be recognized “as persons before the law” and “enjoy legal capacity on an equal basis with others in all aspects of life” (Arts. 12.1 and 12.2). It further states that the existence of a disability “shall in no case justify a deprivation of liberty” (Art. 14.1). In addition, the [CRPD Committee](#) has specifically rejected the link between diagnosis and dangerousness as a ground for involuntary treatment or detention. It affirmed that [“the involuntary detention . . . based on risk or dangerousness . . . or other reasons tied to impairment or health diagnosis”](#) amounts to arbitrary deprivation of liberty.

Accordingly, when it comes to criminal responsibility, the Committee [has stated](#) that persons with disabilities have the same right to stand trial, to face a fair trial, and to eventually be found criminally responsible or absolved by a court or jury of their peers, just as every other citizen. Throughout that process and after it, persons with disabilities should be provided with [“support and accommodations as may be needed.”](#) If pre-trial detention is necessary, the decision to impose it should be guided by the [universal principles of innocence and non-discrimination](#), and it should be subjected to judicial review with all the guarantees of due process of law conceded to every person. The [United Nations Working Group on Arbitrary Detention](#) stated, in line with the CRPD Committee, that persons with disabilities who are deprived of their liberty should be offered [“the same substantive and procedural guarantees available to others.”](#) In compliance with this, States should ensure that persons with disabilities have [“the opportunity to stand trial promptly, with support and accommodations as may be needed, rather than declaring \[them\] incompetent.”](#) The reason underlying these standards is that the imposition of a compulsory measure is a punishment

without trial, based on a discriminatory distinction on the basis of a disability. The same position is maintained by the [World Network of Users and Survivors of Psychiatry](#) (WNSUP), stating that [“\[t\]hose of us who commit crimes should be dealt with under the criminal justice system, with appropriate supports to allow us to stand trial.”](#)

On the other hand, a number of United Nations bodies accept, though under restricted circumstances, the involuntary detention of persons with disabilities. The [United Nations Human Rights Committee](#) [accepts](#) the involuntary detention of persons with disabilities as a “last resort” and for the “shortest appropriate period of time,” with the “purpose of protecting the individual in question from serious harm or preventing injury to others.” With regards to pre-trial detention, this Committee [has considered](#) that it should be used only where it is “lawful, reasonable, and necessary,” clarifying that necessary means to “prevent flight, interference with evidence or the recurrence of crime,” or when the person constitutes a “clear and serious threat to society.” The Human Rights Committee has also highlighted that the seriousness of the crime cannot justify prolonged pre-trial detention. However, it is not clear to what extent the dangerousness (which in practice is usually associated with some diagnosis, as in the case under analysis) would justify prolonged pre-trial detention or involuntary detention for the purpose of “protection.” In addition, the [Sub-Committee for the Prevention of Torture](#) considers that when a person detained by a state [“suffers serious mental disorders . . . the placement in a psychiatric facility may be necessary to protect the detainee from discrimination, abuse and health risks . . . provided that . . . the placement is subject\[ed\] to constant judicial review.”](#) These standards conflict with those of other human rights bodies mentioned above, because instead of recognizing persons with disabilities’ right to stand trial and ensuring them the right to a fair trial with all the guarantees that every person should have in a criminal procedure, they authorize involuntary detention.

In Romania, like in many states around the globe, criminal laws and procedures contain security measures as an alternative to prison for those persons with psychosocial or intellectual disabilities who are accused—but not convicted—of the commission of a crime. This has raised the concern of the CRPD Committee in its [Concluding Observations](#) to several countries. Security measures rely on the idea that *because of* their condition, persons with disabilities are unable to stand trial. Security measures usually consist of detaining persons in mental health institutions and forcing them to undergo psychiatric treatment (usually for many years). The existence of security measures has been the [object of strong criticisms](#) in terms of due process concerns because of their punitive characteristics and the fact that they are applied against people who have not yet been criminally convicted. Those critics led to the development of procedural guarantees and safeguards to control the imposition of security measures and prevent abuse or arbitrariness. However, this is not enough. Since the approval of the CRPD and according to the standards issued by the CRPD Committee, these measures should no longer exist because they violate the principles of equality and non-discrimination and the right to liberty in person for individuals with disabilities. In fact, the [CRPD Committee has recently recommended](#) “eliminate[ing] the security measures that involve forced medical and psychiatric treatment in institutions.” Along the same line, the [Office of the High Commissioner for Human Rights](#) (OHCHR) has recommended the promotion of critical theoretical research in the area of criminal law to [“address the issue of criminal responsibility of persons with disabilities and the subjective element of crime.”](#) by exploring the use of [“impairment neutral”](#) criteria.

According to the analysis above, if the ECtHR would have followed the CRPD standards—[as they affirmed to have done](#)—the outcome should have been different. However, adjudicating in compliance with the CRPD might have demanded a deeper revision of the wording of ECHR and ECtHR jurisprudence. This is because both EHCR and ECtHR jurisprudence contain provisions and standards that might be considered outdated in the light of current international law standards. For example, Article 5.1(e) of the ECHR, approved almost seventy years ago, established that those who are of [“unsound mind, alcoholics or drug addicts”](#) can be detained in different circumstances than those who are not, regardless of what they might or might not have done. Also, the [jurisprudence of the ECtHR](#) established a *test* according to which a detention is lawful when the “alienation” is “conclusively established,” and the “disorder [is] of a character and a scope that legitimize[s] internment.” In light of the norms and standards analyzed above, it can be argued that Article 5.1(a-f) is discriminatory on its face because it treats those affected by infectious diseases, minors, and migrants differently. Besides, the ECtHR’s diagnosis-centered interpretation of this article undermines the universal principle of non-discrimination and the right to liberty in person as recognized in the CRPD.

Recognizing and protecting the rights of persons with disabilities requires a revision of local and regional human rights laws and standards that harmonizes them with the CRPD and the CRPD Committee decisions. In this harmonization task, it would be beneficial to take into account the ECtHR’s consolidated jurisprudence that considers [the European Convention to be a “living instrument”](#) allowing for varied interpretations. A decision consistent with the CRPD standards would have allowed the ECtHR to notice that local legislation and practices did not guarantee the right of *N* to be treated as an equal, since he was denied the right to stand trial and defend himself—with appropriate support—from the criminal charges. Notwithstanding these inconsistencies, a positive outcome of the decision is its general recommendation to the State to ensure [“access to judicial appeal with judicial safeguards.”](#) Hopefully, this recommendation may trigger the review and reform of local legislation in Romania with the aim of guaranteeing the right of liberty of persons with disabilities and their right to stand trial on an equal basis with others, with the accommodations and safeguards that the circumstances may demand.

The Excluded: Albanian Nationals' Right to Vote From Abroad and the International and Regional Approaches

June 28, 2018
by Emirjon Kaçaj*

Introduction

This article examines the right to vote from abroad by focusing on the case of Albania, which does not provide for out-of-country voting. It argues a progressive affirmation of the right to vote from abroad, which requires Albania and other countries to undertake positive measures to organize inclusive and democratic elections that ensure wide participation and free expression of the opinion of the people. With 40% of its citizens residing abroad, this article argues that Albania should allow for voting by mail, electronically, provide polling stations in embassies and consulates, or other methods that ensure inclusive democratic elections.[\[1\]](#)

Background

With a resident population of 2.8 million there are around 3.5 million registered voters in Albania.[\[2\]](#) This is a clear sign that Albania has a large number of emigrants registered in voters' lists. In fact, about 40% of the country's population resides abroad.[\[3\]](#) For instance, around 455,468 Albanian migrants reside in Italy, 429,428 live in Greece and 90,381 in the United States.[\[4\]](#)

About 1.2 million Albanian registered voters can not exercise their right to vote from abroad.[\[5\]](#) Thus, Albanian migrants have to travel back home on voting day in order to participate in elections.[\[6\]](#) Currently, Albania does not provide for the possibility to vote by mail, in diplomatic representations around the world, or electronically.[\[7\]](#) Consequently, the "exclusion" of about 35.6% of voters due to their physical presence out of the country, significantly affects the outcome of the elections.[\[8\]](#) Others argued that migrants lose their ties with their country of origin and therefore should not be entitled to vote from abroad.[\[9\]](#) However, remittances at 8.8% of the gross domestic product (GDP) indicate that Albanian migrants have a significant contribution in the economy of the country.[\[10\]](#) While GDP per capita is about 4,100 United States Dollars

* Emirjon Kaçaj, from Albania, is an international consultant on international law, human rights and labor-migration. He worked for several years for different United Nations entities and specialized agencies, including for the United Nations Office of the High Commissioner on Human Rights, International Labour Organization, International Organization for Migration and the World Bank. He holds a Law Degree from the University of Milan in Italy and an LL.M. from the American University Washington College of Law. Emirjon has authored and co-authored several articles, studies and reports including on international human rights, labor, migration, trafficking in human beings and European legislation. He also carried out research on the right to vote from abroad, right to adequate housing, development finance and business and human rights. During his career, he has provided legal and policy advice to more than 100 institutions around the world on human rights related issues and continues to advocate for the human rights and study international law development.

(USD), each Albanian emigrant sent about 916 USD.[\[11\]](#) However, despite their contribution, Albanian migrants are not given the possibility to vote from abroad.

Analysis

The right to vote in Albania is entrenched in the Constitution.[\[12\]](#) Albania is party to the Council of Europe, which recognizes the right to vote in the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention).[\[13\]](#) The European Court of Human Rights (European Court) noted that the right to vote requires states to take positive measures as opposed to merely refraining from interference.[\[14\]](#) The Parliamentary Assembly of the Council of Europe invited states to enable their citizens living abroad to vote during national elections.[\[15\]](#)

A step back in affirming the right to vote from abroad was taken by the European Court's Grand Chamber in *Sitaropoulos*.[\[16\]](#) The Court overruled the decision of the Chamber and denied the claim brought by Greek citizens requesting to vote in parliamentary elections while residing abroad.[\[17\]](#) While the Court acknowledged that thirty-seven members of the Council of Europe made arrangements for voting from abroad, it emphasized that these procedures were not uniform, i.e. polling stations set up abroad, postal voting, proxy voting, and electronic voting.[\[18\]](#) Hence, it affirmed that states were not required to provide for measures that allow their citizens to vote from abroad.[\[19\]](#) The Court's ambiguous reasoning focused on the diversity of arrangements rather than on the fact that with diverse arrangements, states enabled their citizens to vote from abroad. However, the Court noted that a democratic state "must" be in favor of inclusion and measures that allow the exercise of the right to vote from abroad are "consonant" with the European Convention.[\[20\]](#)

The United Nations Human Rights Committee noted that states must take effective measures to ensure that all persons entitled to vote are able to exercise that right.[\[21\]](#) The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW) envisages the right to vote for migrant workers and members of their families in their state of origin.[\[22\]](#) Consequently, the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW) stressed the importance of ensuring the right to vote from abroad.[\[23\]](#) In 2010, the CMW expressed concern that Albanian emigrants could not exercise their vote from abroad and that this negatively affected the exercise of the right to vote.[\[24\]](#) Hence, the CWM recommended measures that ensure the exercise of the right to vote by Albanian migrant workers residing abroad.[\[25\]](#) Yet, no measures have been adopted by Albanian authorities to allow its citizens to vote from abroad.

Conclusions

Albanians residing abroad have been *de facto* excluded from electoral participation over the last few decades. With almost half of its population living abroad, the responsible Albanian state authorities are under an obligation to preserve the *raison d'être* of the right to vote by adopting positive measures to hold inclusive democratic elections.[\[26\]](#)

While the European Court noted that states are not required to adopt positive measures to allow their citizens to vote from abroad, it underlined the importance of adopting such inclusive

measures.^[27] Currently, 40 out of 47 members of the Council of Europe have adopted measures that regulate the exercise of the right to vote from abroad.^[28] Even though there is no uniformity among these arrangements, certainly they share the same aim of inclusion by allowing citizens living abroad to participate in the electoral process. These arrangements go in line with the resolutions and recommendations of the Parliamentary Assembly of the Council of Europe as well as with the recommendation of the Venice Commission.^[29] Additionally, these arrangements are in line with international instruments that require the adoption of positive measures enabling the effective enjoyment of rights.^[30]

Therefore, considering the progressive affirmation of the right to vote from abroad and in particular in the framework of the Council of Europe, Albanian authorities should undertake the necessary measures to enable their citizens to vote from abroad.^[31] Within the given margin of appreciation in determining proper arrangements, consideration should be given to voting by mail, electronically, establishing polling stations in embassies and consulates, or other methods that ensure inclusive democratic elections.

^[1] See *infra* note 3.

^[2] See *infra* notes 3 and 5.

^[3] See Albanian Institute of Statistics, Population of Albania 2017 (indicating that the resident population in Albania was 2,876,591 in January 2017). See also United Nations, Department of Economic and Social Affairs, Trends in International Migrant Stock: The 2017 revision (indicating that there are about 1,148,144 Albanian migrants around the world).

^[4] *Id.*

^[5] See Central Electoral Commission of Albania, 2017 Parliamentary Elections (indicating that the total number of registered voters was 3,452,324). See also Albanian Institute of Statistics, Population of Albania 2017 (indicating that the resident population in January 2017 was 2,876,591, out of which it is estimated that around 2,221,920 were older than 18 years old and therefore had the right to vote). Consequently, it is estimated that around 1,230,404 voters were registered in the voters' lists but resided abroad on voting day. These estimates do not include factors such as immigrants residing in Albania during 2017 (around 20 thousand) or Albanian citizens found incapable to act, including to vote, by a final court decision.

^[6] See Article 105 of the Electoral Code of Albania.

^[7] *Id.*

^[8] See Albanian National Strategy on Migration and National Action Plan on Migration, 11 (2005).

^[9] See *Sitaropoulos and Giakoumopoulos v. Greece*, App. No. 42202/07 Eur. Ct. H.R. 17-18 (2012) (decision of the Grand Chamber) [hereinafter *Sitaropoulos 2012*] (where the Greek government also noted that the recognition of this right could give rise to political and economic problems).

^[10] See World Bank, Personal Remittances 2018 (referring to 2016 data). See also Luljeta Ikonimi, International Organization for Migration, *E Drejta Migratore (Migration Legislation)*, (Emirjon Kaçaj ed., 2d ed. 2011) (providing more information on Albanian migration).

^[11] See World Bank, GDP Albania (2016).

^[12] See Article 45 of the Albanian Constitution (providing that Albanian citizens who have reached the age of 18 have the right to vote and to be elected).

^[13] See Article 3 of the Protocol 1 of the European Convention [hereinafter Article 3 of Protocol 1].

^[14] See *Mathieu-Mohin and Clerfayt v. Belgium*, App. No. 9267/18 Eur. Ct. H.R. 16-17 (1987).

^[15] See Parliamentary Assembly of the Council of Europe: Abolition of restrictions on the right to vote, Resolution 1459 at 1 (2005). See also Parliamentary Assembly of the Council of Europe: Engaging European diasporas, Resolution 1696 at 3 (2009). See also Parliamentary Assembly of the Council of Europe: Democratic participation for migrant diasporas, Resolution 2043 at 2 (2015). *But see* Venice Commission, Report on Electoral Law and Electoral Administration in Europe, Study No. 352/2005 at 13 (2006) (indicating that at the current state the European electoral heritage do not require the introduction of such a right). See also Venice Commission, Report on Out-of-Country

Voting, Study No. 580/2010 at 15 (2011) (recommending to the adoption of positive measures to the right to vote of citizens living abroad).

[16] See Sitaropoulos 2012 at 25.

[17] *Id.* But see Sitaropoulos and Others v. Greece, App. No. 42202/07 Eur. Ct. H.R. 2 (2010) (decision of the Chamber) [hereinafter Sitaropoulos 2010].

[18] See Sitaropoulos 2012 at 23

[19] *Id.* at 22.

[20] See Sitaropoulos 2012 at 22.

[21] U.N. Human Rights Committee, The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25), General Comment No. 25, (Fifty-seventh session, 1996), U.N. Doc. CCPR/C/21/Rev.1/Add.7 at 5 (1996).

[22] See Article 41 of the ICMW.

[23] See also CMW Concluding Observations for Nicaragua, U.N. Doc. CMW/C/NIC/CO/1 at 9 (2016); CMW Concluding Observation for Mauritania, U.N. Doc. CMW/C/MRT/CO/1 at 9 (2016) and CMW Concluding Observation for Turkey, U.N. Doc. CMW/C/TUR/CO/1 at 2 (2016).

[24] See CMW, Concluding Observations on the Second Periodic Report of Albania, U.N. Doc. CMW/C/ALB/CO/1 at 5 (2010).

[25] See CMW, Concluding Observations on the Second Periodic Report of Albania, U.N. Doc. CMW/C/ALB/CO/1 at 5 (2010). See also François Crépeau (Special Rapporteur on the human rights of migrants), Rep. on Mission to Albania, ¶ 72, U.N. Doc. A/HRC/20/24/Add.1 (Apr. 10, 2012).

[26] See Sitaropoulos 2012 at 22 (where the Grand Chamber noted that states “must” be in favor of inclusion and measures that allow expatriates to vote from abroad are “consonant” with Article 3 of Protocol 1 on the right to vote).

[27] *Id.*

[28] In *Sitaropoulos*, the Grand Chamber mentioned nine member States of the Council of Europe, in addition to Greece, that did not provide for voting from abroad: Albania, Andorra, Armenia, Azerbaijan, Cyprus, Ireland (voting from abroad allowed only to civil and military servants and their families), Malta, Montenegro and San Marino. See Sitaropoulos 2012 at 13. However, during the past years Andorra, Azerbaijan (in the context of presidential elections) and Cyprus have made arrangements in this regard. See OSCE/ODIHR Needs Assessment Mission Report for Andorra at 5 (2015). See also OSCE/ODIHR Election Observation Mission Final Report for Azerbaijan at 9 (2013). See also OSCE/ODIHR Needs Assessment Mission Report for Cyprus at 5 (2016).

For the purpose of this article, Armenia was not counted in the list of countries with arrangements allowing their citizens to vote from abroad as electronic voting from abroad is solely provided for diplomatic and military staff posted abroad and their family members (similar to Ireland). See OSCE/ODIHR Needs Assessment Mission Report for Armenia at 6 (2016).

[29] See *supra* note 14.

[30] See *supra* note 20. See also Article 41 of the ICMW providing for the right to vote for migrant workers and members of their families in their state of origin.

[31] See European Parliament Resolution of Feb. 15, 2017 on the 2016 Commission Report on Albania (2016/2312(INI)) at 4 (encouraging Albania to take measures to facilitate the possibility for Albanian citizens residing abroad to vote in Albanian elections outside the country).